



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>





Dr. 11)

L. D1.1

Per. L. Eng. A. 75 d. 48<sup>1870(3)</sup>

CW. U. K

120

L. 40













THE  
**LAW JOURNAL REPORTS**

FOR  
THE YEAR 1870:

CASES RELATING TO  
**THE POOR LAW, THE CRIMINAL LAW,**  
AND OTHER SUBJECTS

CHIEFLY CONNECTED WITH  
**The Duties and Office of Magistrates,**

DECIDED IN THE  
**COURTS OF QUEEN'S BENCH, COMMON PLEAS, AND EXCHEQUER,**  
AND IN THE  
**COURT FOR CROWN CASES RESERVED,**  
MICHAELMAS TERM, 1869, TO MICHAELMAS TERM, 1870.

---

REPORTED

*In the Court of Queen's Bench,*  
By ROBERT SAWYER, Esq. AND ARTHUR PAUL STONE, Esq.  
BARRISTERS-AT-LAW.

*In the Court of Common Pleas,*  
By WILLIAM PATERSON, Esq. AND GILMORE EVANS, Esq.  
BARRISTERS-AT-LAW.

*In the Court of Exchequer,*  
By HUGH COWIE, Esq. AND LUMLEY SMITH, Esq. BARRISTERS-AT-LAW.

*In the Court for Crown Cases Reserved,*  
By THOMAS SIRRELL PRITCHARD, Esq. BARRISTER-AT-LAW.

---

MAGISTRATES' CASES.  
NEW SERIES, VOL. XXXIX.

---

LONDON:

PRINTED BY SPOTTISWOODE AND CO. NEW-STREET SQUARE.

PUBLISHED BY EDWARD BRET INCE, 5, QUALITY COURT, CHANCERY LANE.

---

MDCCCLXX.





# REPORTS OF CASES

## CHIEFLY CONNECTED WITH

### THE DUTIES AND OFFICE OF MAGISTRATES

#### AND THE ADMINISTRATION OF THE CRIMINAL LAW.

VOL. XXXIX. (NEW SERIES), COMMENCING WITH

MICHAELMAS TERM, 33 VICTORIÆ.

[IN THE COURT OF QUEEN'S BENCH.]  
 1869. } HALL, *appellant*, v. POTTER,  
 Nov. 6. } *respondent*.

*Public Health Act, 1848, (11 & 12 Vict. c. 63) s. 69—Notice to pave streets not being highways.*

*A notice by a local board of health to the owner of houses abutting upon a street not being a highway, to sewer, level, pave, flag and channel the same, in pursuance of the Public Health Act, 1848, (11 & 12 Vict. c. 63) s. 69, is not invalid by reason of the plans and sections of the required works deposited under the 24 & 25 Vict. c. 61. s. 16, including narrow strips of land in front of the houses, not open to or used by the public.*

CASE stated by the stipendiary Magistrate for the Manchester division of the county of Lancaster, under the 20 & 21 Vict. c. 43.

1. At a petty sessions, holden at the county police court for the division of Manchester, on the 16th of December, 1868, a complaint was preferred by the appellant, the Clerk to the Local Board of Health for the district of Rusholme, in the county of Lancaster, that the respondent was, on the 7th day of August, 1867, the owner of certain premises fronting, adjoining and abutting upon a certain

NEW SERIES, 39.—MAG. CAS.

street, called Victoria Street, in Rusholme, within the said district, which said street was not then a highway repairable by the inhabitants at large, and was not then sewered, levelled, paved, flagged and channelled to the satisfaction of the said local board of health; and that the said local board of health had, by a certain writing, dated the 7th day of August, 1867, sealed with their seal, and signed by five of their members, and also by the clerk of the said local board of health, given the said respondent, as owner of the said premises fronting, adjoining or abutting upon the said street, notice within the space of two calendar months from the date of the said notice, to sewer, level, pave, flag and channel so much of the said street as the said premises fronted, adjoined or abutted upon, in manner in the said notice mentioned; and the said notice further required the said respondent to execute these works in accordance with a plan and section therein mentioned as being deposited at the office of the said local board of health.

2. The respondent did not, as required by the said notice, within two calendar months after the date of the said notice, execute the works in the said notice mentioned.

3. The said local board executed the said works required in the said notice to

B



be done by the respondent, except that they did not flag certain gardens included in the said notice and plan, and mentioned in the 9th paragraph of this case. The said local board also executed works of sewerage, levelling, paving, flagging and channelling other parts of the said street.

4. An apportionment of the expenses incurred by the said local board, in doing such work as was done by the said local board in the said street, was duly made, as required by the 11 & 12 Vict. c. 63. s. 69, and notice thereof, so far as related to the said premises of the respondent, was duly given to him.

5. The amount of the said expenses apportioned in respect of the said premises of the respondent for the work so done, as apportioned by the surveyor, amounted to 94*l.* 11*s.* 7*d.*; and such sum was duly demanded of the respondent, on the 2nd day of June, 1868, and he refused to pay the same.

6. The respondent was duly summoned before the stipendiary Magistrate, to shew cause why an order should not be made upon him for the payment of the sum of 94*l.* 11*s.* 7*d.* so as aforesaid demanded of him.

7. The complaint was heard and determined at a Petty Sessions, on the 12th day of January, 1869, the said parties then being present by attorney and counsel, and upon such hearing the said summons was dismissed.

8. The appellant being dissatisfied with such determination, applied for a case under 20 & 21 Vict. c. 43.

9. The facts hereinbefore mentioned were proved, and it was also proved that the said premises of which the respondent was the owner, fronted, adjoined and abutted upon the said Victoria Street to the extent of 201 feet 3 inches, co-extensive with such street. It was also proved, that a portion of such premises, namely, 154 feet 6 inches in length, and 2 yards and 21 inches in breadth, composed small gardens enclosed in front of the houses there situate, of which the respondent was the owner. It was also proved, that no part of the said gardens had ever been dedicated to or used by the public. The notice so given, to sewer, level, pave, flag and channel, referred to a plan deposited in

the office of the said local board, and included the land forming the said street, and also other land forming the said gardens. The length of the said street, as shewn in such plan, was 638 feet and 6 inches, and the width thereof 36 feet, including nevertheless in such 36 feet and 6 inches, the said gardens, so far as the same were so co-extensive with the said street as aforesaid. The stipendiary Magistrate held the notice to sewer, pave, &c., to be informal and invalid, because it required the respondent to do that which the local board had no authority to require him to do, inasmuch as it required him to sewer, &c. the land forming the said gardens in front of the respective houses.

10. The opinion of the Court is requested upon the following question:—Was the said notice of the 7th August, 1867, a bad notice, and altogether invalid on the ground above mentioned, or a good and valid notice so far as it related to the said works so actually executed by the said board?

11. If the Court shall be of opinion that the notice of the 7th August, 1867, was bad and altogether invalid, for the reason above stated, then the determination of the stipendiary Magistrate is to stand; otherwise the case is to be remitted back, with the opinion of the Court thereon, for the further hearing of the case.

*W. R. Cole* for the appellant.—The notice is in pursuance of the Public Health Act 1848 (11 & 12 Vict. c. 63), s. 69, and is good *pro tanto*, notwithstanding s. 16 of the 24 & 25 Vict. c. 61, under which, previous to giving such notice, plans and sections of the required works are to be deposited in the office of the local board for the inspection of persons interested, and a reference to which is to be held sufficient without the annexation of a copy of such plans, &c. to the notice itself.

[*LUSH, J.*—The words of the notice are, “So much of the said street;” that does not include the strips of garden. Notwithstanding the error in the plan, the respondent must have been perfectly aware of what was really required of him.]

He referred to *Caley v. The Local Board for Kingston-upon-Hull* (1); *Regina v. The*

(1) 5 B. & S. 815; s.c. 34 Law J. Rep. (N.S.) M.C. 7.

*Newport Local Board* (2); *The Mayor, &c. of Manchester v. Chapman* (3). Further, the objection, if valid, is cured by s. 137 of the 11 & 12 Vict. c. 63, and s. 63 of the 21 & 22 Vict. c. 98.

*Quain* (*Baylis* with him), for the respondent.—The decision of the Magistrate was right. By s. 16 of the 24 & 25 Vict. c. 61, the board, before giving notice under s. 69 of the Public Health Act 1848, are required to cause plans and sections of the required works to be made upon a certain scale, and by the form of notice given in schedule A to the first-mentioned act, such works are “to be executed in accordance with the plans and sections,” which are thus constituted an inseparable part of the notice. *Parkinson v. The Mayor, &c. of Blackburn* (4), where a notice requiring an owner to execute works in excess of jurisdiction, was held bad, is decisive of the present question.

COCKBURN, C.J.—There is no doubt that the notice, so far as it related to what might legally be required, is perfectly good, and is not vitiated by that portion of it which is *ultra vires*. In arriving at this conclusion, we impose no hardship upon the respondent, who must have known precisely what the local board in the exercise of their duty required of him, notwithstanding their mistake in including in their plan a portion of ground which was private property, and could not therefore be made the subject of the order.

LUSH, J.—The effect of the notice and plan, taken in conjunction, was simply to call upon the respondent to flag, channel, &c. so much of the street as lay in front of his property. It is quite impossible that he could have been misled by the accidental insertion in the plan of a piece of garden which was his own private property.

HANNEN, J.—I am of the same opinion. The notice, and so much of the plan as refers to the strip of garden in front of the respondent's houses, may be considered as notice to flag, &c. area A, and also area B, the first being within and

the second beyond the jurisdiction of the local board; and the respondent has no right to refuse to do what is properly required with respect to area A, because he is improperly required to do something with respect to area B. *Parkinson v. The Mayor of Blackburn* (4) is distinguishable from this case, inasmuch as there the board required the owner “to repair, form, and pave” a portion of the street, which was entirely beyond the powers conferred upon them by the act. In this case, so much of the notice as is valid, is readily and easily separable from that which is bad.

HAYES, J. concurred.

*Judgment for the appellant.*

Attorneys—Dangerfield & Frazer, agents for G. S. Hall, Cambridge, for appellant; Bower & Cotton, agents for Edward Aston, Manchester, for respondent.

[IN THE COURT OF QUEEN'S BENCH.]

1869. } KENT, *appellant*, v. ASTLEY,  
Nov. 13. } *respondent*.

*Factory—Slate Quarry*—30 & 31 Vict. c. 103. s. 3 (7)—“*Premises*.”

*A slate quarry occupying with its accessories a large tract of land, uninclosed and approachable by no definite road or entrance, and furnished with covered sheds to which the rough blocks of material when raised are conveyed and there converted by a manufacturing process into slates, flags and other saleable articles, is not within the meaning of the term “premises” in the 30 & 31 Vict. c. 103, (Factory Acts Extension Act, 1867), s. 3. sub-section 7.*

CASE stated by Justices of the Peace for the county of Carnarvon, under the 20 & 21 Vict. c. 43; of which the following is a sufficient summary:—

At a petty sessions holden at the county hall at Carnarvon, in the said county, on the 26th of September, 1868, two summonses issued by Samuel Saville Kent, Sub-inspector of Factories (the appellant), against John N. F. Astley, of the parishes of Llanberis and Llanddeiniolen, in the said county, slate and flag quarry proprietor (the respondent), were heard before the Justices.

The first complaint against the respon-

(2) 32 Law J. Rep. (N.S.) M.C. 97.

(3) 37 Law J. Rep. (N.S.) M.C. 173.

(4) 33 Law Times 119.

dent was that he being the occupier of a certain factory within the said parishes and county, the same being a factory within the true intent and meaning of the Factory Acts, in such factory as aforesaid, in, on and within the precincts of which said factory 50 and more persons were employed in a certain manufacturing process, namely, in altering, repairing, ornamenting, finishing and otherwise adapting slates and flags for sale, did unlawfully employ, keep and allow to remain in the said factory, a young person requiring a surgical certificate of age, named Richard Griffiths Davies, without the certificate of age required by the said acts, whereby the said respondent had forfeited for the said offence a penalty of not less than 2*l.* nor more than 5*l.*

The second complaint against the respondent was for unlawfully employing and keeping, and allowing to remain in the said factory, the above mentioned Richard Griffiths Davies, without having duly registered his name and the date of his first employment, in the form and according to the directions given in Schedule B. to the Act 7 Vict. c. 15, whereby the said respondent had forfeited for the said offence a penalty of not less than 2*l.* nor more than 5*l.*

The said alleged factory is a slate quarry in a large open space extending over about 400 acres (in which there are also covered sheds or huts where the splitters work), where hundreds of men and very young boys are employed in getting large blocks of slate, which blocks or raw material are drawn, when got, to other parts of the same quarry and split with hammers and chisels, used as wedges, into laminæ or slates. These laminæ or slates are then edged square with an iron knife, by hand, into separate slates or articles, and divided into quantities for sale. They are sent away in thousands from the quarry to the market. These slates are also sold by retail, either separately or in quantity, by the buyers of them. In the quarry tombstones, gateposts, chimney-pieces, tanks and slabs of every size, are also made out of these blocks of slate, and ornamented according to order. The boy in question was found by the sub-inspector working in one of

the sheds with other boys, to the number of upwards of 50, adapting slates for sale, on the 23rd of July, 1868. The shed was within the precincts of the quarry, between which and the mountain there is no boundary; and one of the places in which slabs are made is nearly a mile from the quarry, with fields, in different occupations but belonging to the proprietor of the quarry, intervening. There is no defined entrance to the quarry, which is entered by the work-people and others by a great many different ways. [The case also referred to the 30 & 31 Vict. c. 103. s. 3, so much of which as is material to the question is hereafter set out in the argument.]

Upon the hearing of the summonses, the Justices decided to dismiss them, considering that there was no possibility of keeping a clock to be visible and capable of being heard by all persons employed in the quarry, which one of the Factory Acts appears to contemplate; that the requirement of another of the said acts, that the inside walls of a factory shall be lime-washed, would be difficult and absurd in the case of a quarry; and that the definition of a factory as a place wherein machinery was used in manufacturing hemp, flax and such like materials, is not applicable to a quarry, to which, in fact, scarcely any of the clauses were applicable.

The question for the consideration of the Court, was whether the quarry and premises above described were within the operation of the Factory Acts? If the Court should be of opinion in the affirmative, the case was to be remitted to the Justices.

*Sir J. D. Coleridge (Solicitor General) (Archibald with him)* for the appellant.—By the 30 & 31 Vict. c. 103 (Factory Acts Extension Acts), s. 3, sub-section 7, “any premises, whether adjoining or separate, in the same occupation, situate in the same city, town, parish or place, and constituting one trade establishment, in, on or within the precincts of which 50 or more persons are employed in any manufacturing process,” are included under the term “factory,” and by the same section “manufacturing process” is defined to mean “any manual labour exercised by

way of trade or for purposes of gain, in or incidental to the making any article or part of an article, or in or incidental to the altering, repairing, ornamenting, finishing or otherwise adapting any article for sale;" which definitions are applicable to a slate quarry and the works therein carried on, such as are described in the case. The justices were therefore wrong in their view of the question. *Palmer's Shipbuilding and Iron Company v. Chaytor* (1), where the whole of the several branches of the business of the manufactory communicated with each other, and were within one common boundary, may be relied on by the other side; but the true meaning is that any place in the same occupation used for trade purposes, and on which the statutable number of persons is employed, is a factory, although the manufacturing and other processes necessary to the purposes of the business may be carried on separately, and at a distance from each other.

[HANNEN, J.—Some of the old bankruptcy cases seem to throw light upon the question what constitutes a manufacturing process exercised by way of trade. In *Sutton v. Weeley* (2) a freeholder using a portion of his own soil in the manufacture of bricks was held not to be a trader within the bankrupt laws.]

Here the words are not merely "by way of trade," but also "for purposes of gain."

[COCKBURN, C.J.—Suppose the owner of land to use it for the cultivation of hemp, which he afterwards manufactures into rope, may he not carry on his manufacturing operations in such manner as to bring himself within the operation of the Factory Acts?]

There is no practical difference between such a case and that of a man who purchases raw material out of which he produces a manufactured article by manual labour. The process in question is as much a manufacturing process, and the place in which it is carried on is as much a factory within the meaning of the statute as the different processes and places enumerated in section 5, and thereby excepted from the operation of the act (which but for such exception would be within it), such as

bleaching and dyeing and other works, which have been successively brought within the Factory Acts, or otherwise regulated by special acts of parliament passed from time to time. Further, the justices have given erroneous reasons for their decision. Under the 7 & 8 Vict. c. 15. s. 26, the hours of work of children and young persons in factories are to be regulated "by a public clock or by some other clock open to the public view," but it is not required that the clock should be placed in the factory; and indeed it is desirable that the clock should be out of the control of the occupier. Then as to the lime-washing of factory walls under the 3 & 4 Will. 4. c. 103. s. 26, and the 7 & 8 Vict. c. 15. s. 18, it is provided by clause 9 of the schedule to the 30 & 31 Vict. c. 103, that these sections shall not be in force as respects any factory.

*Milward* (Hance with him) for the respondent.—It is clear that the quarry in question, being a mere aperture on the side of a mountain, and separated therefrom by no defined fence or boundary, and to which it is impossible to adapt the requirements of the various Factory Acts, such as the hanging up of an abstract of the act, and the notice required by the 7 & 8 Vict. c. 15. s. 28; the providing of a clock for regulating the hours of labour, &c., cannot come within the meaning of the term "premises" in section 3. sub-section 7 of the 30 & 31 Vict. c. 103. The case is widely different from that of *Palmer's Shipbuilding and Iron Company v. Chaytor* (1), where the different places in which the several branches of the business were carried on communicated with each other, and were within one common boundary.

[COCKBURN, C.J.—The section under consideration brings within its operation "any premises, whether adjoining or separate, in the same occupation."]

It is also required that the premises should be situate "in the same city, town, parish or place," whereas it appears by the summonses in the present case that the quarry and its accessories extend into two different parishes.

*The Solicitor General* in reply.

COCKBURN, C.J.—I am of opinion that the Justices were right in their decision,

(1) 38 Law J. Rep. (N.S.) M.C. 63; s. c. Law Rep. 4 Q.B. 209.

(2) 7 East 442.

although I do not adopt the reasons by which they were guided. The process in question being one in which manual labour was employed for converting the rough material taken from the quarry into slates for building, was no doubt a manufacturing process; and I agree that if the proprietor of land sees fit to use it for other than ordinary agricultural purposes, and to convert its produce into some manufactured article, as in the case I put in the course of the argument of the owner of land growing hemp and also carrying on the business of a rope-maker, he would be, *quoad* such conversion of the raw material, a manufacturer, and therefore liable to be convicted for offences within the scope of the Factory Acts. But my judgment in the present case is founded upon this consideration: that the process of converting slate in the rough into the manufactured article, was carried on in the quarry itself or places accessory thereto; and I cannot entertain the idea that it was the intention of the legislature to bring a quarry within the meaning of the term "premises," as used in section 3 of the statute in question; and further, I do not think that the fact of the process being carried on in covered sheds attached to this particular quarry, which, with its other accessories, extends over an area of 400 acres, makes any difference in this respect. The legislature has, doubtless, from time to time extended the operation of the Factory Acts, which was at first confined to buildings in which persons of both sexes were employed, to processes not originally within their contemplation; but it has not yet included a mere open air process, such as the one under consideration, and we should be outstripping the law in declaring those Acts applicable to this particular kind of work, which, although carried on in the precincts, might just as well be performed in the quarry itself. Nor do we discern in the case before us, the existence of any of those evils which it was the special object of the legislature to guard against, such as the unseemly mingling of the sexes, the crowding together of a number of persons within an inconveniently narrow space, or the employment of young children in works disproportioned to their

powers. I think, therefore, we should be going beyond our province if we put such a construction on the word "premises," as that contended for on behalf of the appellant.

MELLOR, J.—I am of the same opinion, although I must confess to some fluctuations of mind during the argument. The course of the legislature appears to have been to extend the operation of the Factory Acts first to one trade and then to another, as occasion seemed to require; and I think we may derive much assistance from the consideration that the attention of the legislature has not yet been specially and in terms directed to slate and stone quarries, although long recognised as a valuable and important description of property. We find that bleaching and dyeing works, and other manufacturing processes, have been successively dealt with, in each case by a separate act of parliament, and the fact that quarries have escaped notice may fairly lead us to the conclusion that the legislature has not, up to the present time, determined to deal with them. I think, therefore, though not without doubt, that we should be attaching too wide a meaning to the word "premises" in the statute under consideration, by construing it as including a slate quarry. If it were necessary to determine the other point, I should have no hesitation in saying that the process in question was a manufacturing one.

HANNEN, J.—I am of the same opinion. It seems difficult to arrive at the conclusion that an open quarry, situate on a mountain's side, and occupying with its accessories several hundred acres, was ever intended by the legislature to be dealt with under the general term "premises;" and I agree with what has fallen from my brother Mellor, that the fact that other processes have from time to time been successively dealt with and brought under the operation of the Factory Acts, goes a long way to show that the omission of this particular source of employment was intentional and deliberate.

*Judgment for the respondent.*

---

Attorneys—Solicitor to the Treasury, for appellant; J. Fluker, agent for Dewes & Burgess, Nuneaton, for respondent.



[CROWN CASE RESERVED.]

1869. }  
 Nov. 13. } REGINA v. MACGRATH.\*

*Larceny—Taking—Mock Auction—Influence of threat.*

*The prosecutrix entered a sale-room, where a mock auction was being held. The prisoner was auctioneer, and knocked down a piece of cloth to the prosecutrix for twenty-six shillings, for which she had not bid, as he knew. The prosecutrix denied that she had bid; the prisoner asserted that she had, and must pay for it before she could leave. The prosecutrix tried to go out of the room, when a confederate standing between her and the door also said that she had bid, and prevented her leaving. She then in fear paid the money, and took away the cloth which was given to her:—Held, that these facts constituted a larceny, as they sufficiently shewed that the money was obtained from the prosecutrix against her will.*

The following CASE was stated by the learned Assistant Barrister to the Recorder of Liverpool.

At the court of Quarter Sessions of the Peace, holden in and for the borough of Liverpool, on the 30th day of August, 1869, Peter MacGrath was tried upon an indictment which charged him with feloniously stealing 26s. of the moneys and property of Peter Powell.

It was proved at the trial that on the 26th day of August, 1869, Jane Powell, the wife of the prosecutor, Peter Powell, between three and four o'clock in the afternoon passed a sale-room, and upon being invited to enter did so. There were about one dozen persons in the sale-room, and the prisoner was acting as auctioneer, and selling table-cloths and other articles. After two table-cloths had been sold, and purchased by two women who were present, a piece of cloth was put up for sale by auction, the prisoner acting as auctioneer. A man bid 25s. for it, when another man standing between Jane Powell and the door said to the prisoner that she had bid 26s. for it, upon which the prisoner knocked it down to her. The witness, Jane Powell, said: "I had not bid for it, nor

\* Coram Kelly, C.B., Blackburn, J., Martin, B., Lush, J. and Brett, J.

made any sign; I told the prisoner I had not bid. He said I did. I said I did not, and would not pay for it; I said this several times. I went to go out. The prisoner said I had bid for it, and must pay before I would be allowed to go out. I was then prevented going out by the man who had said I had bid for it. He stood between me and the door, and said I must pay for it. I wanted to go out, and the man prevented me. I then paid 26s. to the prisoner; I paid the money because I was afraid. The piece of cloth was then given to me, and I took it away." In about an hour after she returned and saw the prisoner, and told him she could not keep the cloth, as she had not bid for it. He told her he could not give the money back, but if she came the following week he would exchange it. The next day the place was closed when Peter Powell and his wife went to call there about the cloth; but close by in the street the prisoner and the man who said she had bid, and another man by whom Jane Powell had been invited on the first occasion into the sale-room, were seen together and immediately to separate and go different ways. Peter Powell followed the prisoner, and said to him, "I believe you are the man who forced my wife to pay for a piece of cloth she never bid for;" upon which he replied, "I told her to come to the house on Monday." After some little struggle and endeavour to escape on the part of the prisoner he was given into custody. When charged he said to the policeman, "She cannot lock me up, she paid me the money." The counsel for the prisoner objected that the facts did not prove a larceny.

I directed the jury that if the prisoner had the intention to deprive her of her money, and in order to obtain it was guilty of a trick and artifice by fraudulently asserting that she had made a bid when she had not, as he well knew, and that he obtained the money by such means he was guilty of the offence charged. The jury found that no bid had been made by Jane Powell, which the prisoner knew, and that he obtained the money from her by the trick and artifice mentioned above. A verdict of guilty was then entered. I postponed passing sentence and remanded the prisoner back to gaol, and reserved the

question whether the facts proved a larceny, and also the question whether I rightly directed the jury, for the decision and opinion of the Court of Criminal Appeal.

*Commis* for the prisoner.—It is submitted that this conviction should be quashed because the prosecutrix here paid the money of her own will in order to free herself from a difficult position, and not under such an impression of terror as was sufficient to amount to a felonious taking on the part of the prisoner, to whom she paid it. She knew that she had not bid for the cloth, and that she could not be made to pay for it. It is a case of simple duress or extortion, but not robbery or larceny—*Rex v. Wood* (1). The prosecutrix paid her money, and took away the goods; therefore, as she had the goods for the money, it cannot be larceny—*Rex v. Wilson* (2). The direction to the jury was insufficient; they ought to have been asked whether she parted with her money against her will.

*McConnell* for the Crown.—The prosecutrix parted with her money under the influence of fear, arising from expected violence to her person, and therefore unwillingly; and the prisoner produced that state of fear by a trick with the object of obtaining her money. That is larceny—*Rex v. Hickman* (3). The jury have found that the prisoner obtained the money by a trick or artifice, which had the effect of inducing the prosecutrix to part with it, and that is sufficient—*Rex v. Horner* (4). If the prosecutrix was induced to part with the money through surprise, even if not against her will, still not being with her consent, it is larceny—*Rex v. Morgan* (5), *Regina v. Robertson* (6). The prosecutrix never intended to take the goods in the place of the money.

KELLY, C.B.—I think the conviction ought to be affirmed. The prisoner acted as, and professed to be an auctioneer. There was a bid for the piece of cloth,

and it was knocked down, or at least the prisoner pretended to knock it down, to the prosecutrix. An altercation then arose. The prosecutrix said the cloth was not knocked down to her, and that she had not bid for it. The prisoner knew that this was so, but pretended that the prosecutrix had made a bid for the cloth. He would not let her go, and intimidated her, for she says in her evidence that she was afraid of him. She was told that she should not leave the room unless she paid for the cloth. In consequence of being thus frightened by the prisoner, and of his threat that she should not leave the room, the prosecutrix paid the money. The meaning of the finding of the jury must be taken to be, that the prosecutrix did not pay the money voluntarily. She was induced to do so by a subterfuge, and also by a threat of what might have amounted to personal violence. Under these circumstances she parted with her money, and I think, therefore, against her will.

There are several definitions of larceny. *Bracton* (lib. iii. c. 32. p. 150), defines it thus: "Furtum est secundum leges contractatio rei alienæ fraudulenta cum animo furandi, invito illo domino cujus res illa fuerit."

In modern times, *East* (7) defines it as "The wrongful or fraudulent taking and carrying away by any person of the mere personal goods of another, from any place, with a felonious intent to convert them to his, the taker's, own use, and make them his own property, without the consent of the owner."

The latter definition was adopted by Parke, B. in *Regina v. Holloway* (8).

The Criminal Law Commissioners, in their definition of larceny, say, "The taking and carrying away are felonious where the goods are taken against the will of the owner, either in his absence or in a clandestine manner, or where possession is obtained either by force or surprise, or by any trick, device or fraudulent expedient, the owner not voluntarily parting with his entire interest in the goods" (9).

(1) 2 Leach C. C. 721; s. c. 2 East P. C. 732.

(2) 8 Car. & P. 111.

(3) 1 Leach C. C. 318.

(4) 1 Leach C. C. 270.

(5) Dears. C. C. 395.

(6) 34 Law J. Rep. (N.S.) M. C. 35.

(7) 2 East P. C. c. 16. s. 2.

(8) 1 Den. C. C. 370.

(9) 1 Rep. p. 16; and see Rosc. Cr. Ev. 6th ed. 569.

This case comes exactly within that definition, as the money was taken against the will of the owner. The prosecutrix did not part with it voluntarily, but the possession was obtained by fraud and force. Both these causes operated on the mind of the prosecutrix. It was a lie, a trick, a device, and fraudulent misrepresentation. The crime of obtaining money by false pretences is of another kind. It is constituted by the pretence that something has taken place which, in fact, has not taken place, by which pretence a person is deceived and induced to part with his money, &c., intending at the time so to part with it. The present is a different case. The prosecutrix was not deceived, she was intimidated, and by the operation of both the intimidation and the surprise of the trick, she was induced to give up her money against her will.

It is not necessary to consider whether there was sufficient force used to constitute a robbery. If there was such force, then the prisoner was properly convicted of larceny, which is included in the crime of robbery. All the elements of larceny would there be present.

It has been also argued that the direction to the jury was wrong. It might possibly have been better if the question had been put directly to the jury, whether the money was obtained by the threat of personal violence. That point is not reserved here. If it were, we could not possibly say that the jury were improperly directed in being asked whether the money was obtained by a trick or artifice. It would, under the circumstances, have been superfluous to have asked the jury whether the prosecutrix parted with her money against her will. If, however, this point had been reserved, we should still have affirmed the conviction.

MARTIN, B.—The indictment in this case was for larceny. If a robbery was in fact committed, that does not prevent a conviction for larceny.

BLACKBURN, J.—I am of the same opinion. To constitute a larceny there must be an *animus furandi*, i.e. a felonious intent to take the property of another against his or her will. The essence of the offence is, knowingly to take the goods of another against his will. The goods may

be obtained in various ways. If by force, then a robbery is committed, and this would include a larceny, in which force is not a necessary ingredient. It would be a scandal to the law if goods could be obtained by frightening the owners, and yet that this should not constitute a taking within the meaning of the definition of larceny. The material ingredient is, that the goods should be obtained against the will of the owner. The other ingredients of larceny undoubtedly existed here, as appears in the evidence of the case. There is ample evidence that the money was obtained against the will of the prosecutrix. If there had been any doubt upon the point, the jury should have been asked the question, for it is clear that she did not part with her money of her own free will. This is in effect stated in the case. There was evidence that the money was obtained by the prisoner with a felonious intent, and against the will of the prosecutrix. The jury have found these facts against the prisoner, and these facts constitute larceny. Even if a robbery had in fact been committed, that does not preserve the prisoner from the liability to be convicted of larceny. A robbery includes a larceny. There may be some doubt whether a robbery was in fact committed in this case, but it is not necessary to consider that question.

LUSH, J.—I had some doubt during the argument whether there had been any sufficient taking. But I now think that there was a sufficient taking to constitute larceny, as the money was specifically demanded by the prisoner, and was exacted by him from the prosecutrix under coercion, whilst she was prevented from leaving the room.

BRETT, J.—The question is whether there was a taking from the prosecutrix against her will. If the matter rested on the trick, that would be insufficient, inasmuch as, if the prosecutrix had been deceived by it, and by reason of it had parted with her money, it would not have been larceny, but the money would have been obtained by false pretences; but here it can only be taken as evidence of the prisoner's motives, inasmuch as the prosecutrix was not deceived but parted with her money under the influence of fear of

C

temporary imprisonment, though not accompanied by any personal violence. It is unnecessary to determine whether such an amount of duress would be sufficient to constitute a robbery. Upon consideration I think that if the threat was capable of being executed, and the prosecutrix really parted with her money against her will, that is sufficient to constitute the offence of larceny. There was evidence of such a taking, and the jury here found, in effect, that the money was obtained under a fear sufficient to make the giving of it an unwilling act on the part of the prosecutrix; consequently the taking was against the will of the prosecutrix, and was therefore a larceny.

*Conviction affirmed.*

Attorneys—Wright & Venn, agents for J. Rayner, Liverpool, for the prosecution.

[CROWN CASE RESERVED.]

1869. } REGINA v. WILLIAM RITSON AND  
Nov. 13. } SAMUEL RITSON.\*

*Forgery—24 & 25 Vict. c. 98, s. 20—  
Antedating one's own Deed.*

*A, by deed bearing date on the 7th of May, 1868, conveyed on that day certain lands to B in fee. Subsequently, on the 26th of April, 1869, C produced a deed, bearing date the 12th of March, 1868, purporting to be a demise of the same land for a long term of years, as from the 25th of March, 1868, from A to C. It was found by the jury that the alleged lease was executed after A's conveyance to B, and ante-dated for the purpose of defrauding B:—Held, that A. and C. were guilty of forgery.*

CASE reserved by Hayes, J.

The prisoners were indicted at the last Manchester Assizes, under the 24th & 25th Vict. c. 98. s. 20, for forging a deed with intent to defraud James Gardner. William Ritson was the father of Samuel Ritson and was a builder. He had

\* Coram Kelly, C.B., Martin, B., Blackburn, J., Lush, J., and Brett, J.

been entitled to certain building land at Heaton Norris, in Lancashire, which had been conveyed to him in fee, and he had borrowed on the security of it of the prosecutor James Gardner more than 730*l.*, for which advances he had given on the 10th of January, 1868, an equitable mortgage by written agreement and deposit of title deeds.

On the 5th of May, 1868, William Ritson executed a deed under the Bankrupt Act of 1861, conveying all his real and personal estate to James Booth, a trustee for the benefit of creditors, and on the 7th of May, 1868, by deed between James Booth, the trustee, of the first part, and William Ritson of the second part, and the said James Gardner of the third part, reciting the said deed of assignment, and that James Gardner had become mortgagee of the said building land, and that there was then due to him 789*l.* 6*s.* 2*d.* for principal and interest, and that the said James Booth and William Ritson, having caused a valuation to be made, had ascertained that the said sum was in excess of the value of the said hereditaments, and that there were some building materials on the land not fixed to the freehold, and that it had been agreed between the parties to the deed, to convey the land and assign the materials for 50*l.* to the said James Gardner,—

It was witnessed that the said James Booth and William Ritson, in consideration of the said sum paid as therein mentioned (namely 49*l.* to Booth and 1*l.* to William Ritson), did respectively grant, convey, and confirm unto the said James Gardner, the said freehold land (subject to the two indentures therein mentioned, being previous conveyances to other parties by the said William Ritson of two small plots thereof), and all the estate, claim and demand of the said James Booth and William Ritson therein, to and to the use of the said James Gardner, his heirs and assigns for ever, with a covenant from the said James Booth and William Ritson that they, or one of them, had full power to grant the said lands and hereditaments as aforesaid, free from all incumbrances, except as appeared by the said deed; but which deed contained no mention of the deed found to be a forgery, as

after mentioned, but only mentioned the conveyances of the said two small plots. After the execution of the said conveyance to the prosecutor, he entered into possession of the ground so conveyed to him.

About March, 1869, the prosecutor had buildings erecting on adjoining land, and had employed William Ritson as a builder, and had given him permission to erect a shed on part of the ground so conveyed as aforesaid, which was done. The prosecutor afterwards wished to have it removed, but the two Ritsons, the son being then working with his father, refused to do so, and the prosecutor removed it himself. On the 20th of April, 1869, the prosecutor received a letter from a solicitor, written on behalf of Samuel Ritson, claiming title to the land, and complaining of prosecutor having trespassed thereon by pulling down a building, and offering to show the deed under which Samuel Ritson claimed. And on the 26th of April, a writ in an action of trespass, at the suit of Samuel Ritson, was sued out and served on the prosecutor. The prosecutor then saw the attorney for Samuel Ritson, who produced the deed charged as a forged deed, and the prosecutor commenced the prosecution against the two prisoners before the magistrates.

This deed is dated the 12th of March, 1868, the date being before William Ritson's deed of assignment and the conveyance to the prosecutor, and purports to be made between William Ritson of the one part, and Samuel Ritson of the other part. It recites the original conveyance in fee to William Ritson, and that William Ritson had agreed with Samuel Ritson for a lease to him of part of the land at a yearly rent of 18*l.* 3*s.* 4*d.*, and then professes to demise to Samuel Ritson a large part of the frontage and most valuable part of the land, which had been equitably mortgaged, and afterwards conveyed to the prosecutor, as mentioned above, for the term of 999 years, from the 25th of March then instant. The said deed contained no notice of any title, legal or equitable, of the prosecutor, and contained the usual covenants between a lessor and lessee. It was executed by both William and Samuel Ritson, and professed to have been attested by a witness; but such witness was not called

at the trial, nor was any evidence given as to the professional man, or other person, by whom the deed was prepared. Although the date of the deed was the 12th of March, 1868, it was proved by the stamp distributor, who had issued the stamp, that it was not in fact issued from the office by him before the 7th of January, 1869, nor was the deed ever mentioned by the prisoners before that year.

It was contended on the part of the prosecutor, that the deed was a forged deed, made after the prosecutor's conveyance, and ante-dated, for the fraudulent purpose of overreaching that conveyance, and so endeavouring to deprive the prosecutor of his estate under the said conveyance, and of a considerable part of the property for a long term, and leaving only a valueless reversion in him in such part of the property. And in support of this view, the counsel for the prosecution cited

Hawk, P.C., vol. 1. c. 21. p. 263. 8th Ed., and *Salwey v. Wain*, Moor, 655, 44th & 45th Eliz., and 2 Russ. (4th Ed.), 719. And see 3 Inst. 169; Bac. Abr. Forgery.

The counsel for the prisoners contended that the deed could not be a forgery, as it was really executed by the parties between whom it purported to be made, and that there was no modern authority in support of the doctrine contended for by the prosecution.

He also contended that the prosecutor had obtained his conveyance by fraud, and that it was void against the prisoners, and if so, the lease would be rightfully made.

The jury found that there was no ground for imputing any fraud to the prosecutor with regard to his security and conveyance; and I having expressed an opinion in conformity with the authorities cited on the part of the prosecution, and informed the jury that if the alleged lease was executed after the prosecutor's conveyance, and ante-dated, with the purpose of defrauding him, it would be a forgery.

The jury found both the prisoners guilty. And in pursuance of the request of the prisoners' counsel, I reserved the question, whether the prisoners were properly convicted of forgery, under the circumstances, for the opinion of this Court.

*Torr* for the prisoners.—It is submitted that the crime of forgery was not committed by the prisoners or either of them. Forgery means the fraudulently making by one of a deed as the deed of another, or the altering of a deed belonging to another, or the altering of one's own deed after publication. There is a distinction between fraudulently making a deed containing a falsehood, as for instance, a false recital, or a false date, before it is delivered out to the other party, and fraudulently making a false deed, that is to say, purporting to be another person's deed; and it is submitted that in the former case it would not be forgery, but a false pretence or cheat, whilst in the latter case it would be forgery. So here it is submitted that, though there might have been a cheat or false pretence, and therefore a conspiracy to defraud, the prisoners were wrongly convicted of forgery. By the 5th Eliz. c. 14, which repealed the earlier statutes on the subject, it was enacted that "if any person or persons whatsoever, upon his or their own head or imagination, or by false conspiracy and fraud with others, shall wittingly, subtilly and falsely forge or make, &c., any false deed, charter or writing, sealed, &c., to the intent that the state of freehold or inheritance of any person or persons, of, in, or to any lands, &c., or the right, title, or interest of any person or persons, of, in or to the same, shall or may be interested, troubled, defeated, recovered or charged," &c., &c., "and shall thereof be convicted, either upon an action or actions of forger of false deeds to be founded upon this statute, or, &c., shall pay," &c. Lord Coke, in commenting upon this statute, says (3 Inst. 168), "To forge is metaphorically taken from the smith, who breaketh upon his anvil and forgeth what fashion or shape he will; the offence (as appeareth before) is called *crimen falsi*, and the offender *falsarius*, and the Latin word to forge is *falsare* or *fabricare*. And this is properly taken when the act is done in the name of another person." In commenting on the words "or make, &c.," Lord Coke says, "These be larger words than to forge, for one may make a false writing within this act, though it be not forged in the name of another, nor his seal nor hand counterfeited." As if A made a true deed

of feoffment under his hand and seal of the manor of Dale unto B, and B or some other rase out D, the first letter of Dale, and put in S, and then where the true deed was of the manor of Dale, now it is false, altered and made the manor of Sale. This is a false writing under seal within the purview of this statute. And so it is if a rent charge of one hundred pounds by the year be granted out of land in fee, or for life, &c., and the grantee or any other rase out one and instead thereof inserteth two, this is a false writing within the danger of this statute. But the present conviction was upon an indictment framed on the 24th & 25th Vict. c. 98, s. 20, which enacts that "whosoever with intent to defraud shall forge or alter, or, &c., any deed, &c.," shall be guilty of felony. This is a re-enactment of the 11th Geo. 4. and 1st Will. 4. c. 10, which has the same words, and by the change of language it is submitted it was intended to narrow the application of the word "make" in the statute of Elizabeth.

[MARTIN, B.—In *Russell on Crimes*, Vol. II. p. 710, 4th edit., there is a definition of forgery; and again, at p. 711, the authority in 3 Inst. 169 is referred to in this way: "And though it seems to have been thought that a deed so altered is more properly to be called a false than a forged deed, not being forged in the name of another, nor his seal or hand counterfeited; yet, according to the better opinion, such an alteration amounts to forgery; on the ground that the fraud and villany are the same as if there were an entire making of a new deed in another's name;" and also at p. 719, Russell says, "A man may be guilty of forgery in making a false deed in his own name. Thus it has been holden to be forgery for a person to make a feoffment of certain lands to I. S., and afterwards to make a deed of feoffment of the same lands to I. D. of a date prior to that of the feoffment to I. S., for herein he falsifies the date in order to defraud his own feoffee by making a second conveyance which at the time he had no power to make." Then *East*, P.C., Vol. II. c. 19. s. 1, is referred to which says: "Forgery at Common Law denotes a false making, a making *malo*

*animo* of any written instrument for the purpose of fraud and deceit. This definition results from all the authorities, ancient and modern, taken together ;” and further on it is said, “ Lord Coke indeed seems to confine it in strictness to an act done *in the name of another*, but this was long ago argued in Anne Lewis’s case to be too narrow a definition.” Then *Hawkins* is cited, and at Bk. 1. c. 21. s. 2, he says : “ As to the first particular it is said to be possible for a man knowingly to make a deed in his own name and also to sign it himself, which yet in judgment of law may be no better than downright forgery ; or if a man make a feoffment of certain lands to J. D., and afterwards make a deed of feoffment of the same lands to J. D. of a date prior to that of the feoffment to J. S., in which case he is said to be guilty of forgery, because he knowingly falsifies the date in order to defraud his own feoffee by making a second conveyance which at the time he had no power to make. But Sir E. Coke seems to say that a deed so altered may more properly be called a false than a forged writing, because it is not forged in the name of another, nor his seal or hand counterfeited. But I see no good reason why such an alteration of a deed should not as properly be called forgery as the entire making of a new deed in another’s name, for in both cases not only the fraud and villany are the very same, but also a man’s hand and seal are falsely made use of to testify his assent to an instrument, which after such an alteration is no more his deed than a stranger’s. Also the notion of forgery doth not seem so much to consist in the counterfeiting a man’s hand and seal, which may often be done innocently, but in the endeavouring to give an appearance of truth to a mere deceit and falsity, and either to impose that upon the world as the solemn act of another which he is in no way privy to, or at least to make a man’s own act appear to have been done at a time when it was not done, and by force of such a falsity to give it an operation which in truth and justice it ought not to have, as appears by the foregoing cases in this section, to most of which Sir E. Coke himself seems to agree.” *East* then cites Mr. Justice Black-

stone, 4 Com. 247, who says that “ Forgery is the fraudulent making or alteration of a writing to the prejudice of another’s right.” *East* continues : “ In Crogan’s case, Buller, J. said, it is ‘ the making a false instrument with intent to deceive,’ as Eyre, B., in Taylor’s case, defined it to be ‘ a false signature made with intent to deceive.’ ” *East* also refers to Parke’s case, 2 Lea 775, when Mr. Justice Grose, delivering the opinion of the Judges, and said, “ The definition of forgery is the false making a note or other instrument with intent to defraud.” *East* further cites Eyre, B., in the case of *Jones v. Palmer*, 1 Lea. 366, “ The definition of forgery is the false making an instrument which purports on the face of it to be good and valid for the purpose for which it was created with a design to defraud,” &c. Again, at p. 855, *East* says it is forgery “ if he make a subsequent deed of feoffment as of a date prior to a former deed of his own conveying the same lands, thereby attempting to give the last an operation, which in justice it ought not to have, in order to defraud his own feoffee.”

*Salwey v. Wain*, Moor 655, is also an authority for that proposition.]

No doubt the definitions in the text books are against the contention on behalf of the prisoners, but there has been no case since the case in *Moor*, referred to by *East*, in the above passage, but it is submitted the distinction is between a real deed containing a falsehood and a false deed. In Comyn’s Digest, tit. Forgery (A), the definition given is : “ Forgery is when a man fraudulently writes or publishes a false deed or writing, to the prejudice of the right of the offender.”

*Addison* for the prosecution. — This conviction is right. In Bac. Abr., tit. Forgery (A), it is written : “ The notion of forgery doth not so much consist in the counterfeiture of a man’s hand and seal, which may often be done innocently, but in the endeavouring to give an appearance of truth to a mere deceit and falsity ; and either to impose that upon the world, as the solemn act of another which he is in no way privy to, or at least to make a man’s own act appear to have been done at a time when it was not done,

and by force of such a falsity, to give it an operation which in truth and justice it ought not to have."

[MARTIN, B.—Sir M. Foster, in Lewis's case, p. 117, expressly says that ante-dating a deed of conveyance to overreach a former deed is forgery, and further, "that act does not use the words, 'the deed of any person, or the deed of another,' but any false deed." Is the deed in question, then, a false deed, or is it not? Undoubtedly it is. Was it published with an intention to defraud? It certainly was. This being so, it would sound very harsh to say that the prisoner's case was not brought within the letter and meaning of the act.]

He was then stopped; and the Court gave judgment as follows:—

KELLY, C.B.—This conviction must be affirmed. The authorities,—such as Comyn's Digest; Bac. Abr. Forgery (A); Inst.; Sir M. Foster; Russell on Crimes,—are uniformly to the effect, not that every instrument containing a false statement is a forgery, but that every instrument which purports to be what it is not, whether executed by a person who is not the person purporting to execute, or bearing a date which is not the true date is a forgery. If, then, we adopt the definition of forgery as given by those authorities, it is impossible to distinguish this case from those either of forgery at common law or by statute.

MARTIN, B.—I am of the same opinion. It is laid down in 3 Inst. 169, also by Sir M. Foster and in Russell on Crimes, in the passages referred to in the course of the argument, as well as in Tomlin's Law Dictionary, that when a party makes a feoffment of land, and afterwards makes a feoffment of the same land in which he falsifies the date, he is guilty of forgery.

BLACKBURN, J.—I am of the same opinion. The definition of forgery in Comyn's Digest, tit. Forgery, is correct. Forgery consists, not in making a deed which has a false statement but in making an instrument appear to be what it is not. In Bac. Abr. tit. Forgery, it is said that forgery consists "in the endeavouring to give an appearance of truth to a mere deceit and falsity," or

"at least to make a man's own act appear to have been done at a time when it was not done, and by force of such a falsity, to give it an operation which it ought not to have."

In this particular case the falsehood is in a date which is here material, though in ordinary cases it would not be material, therefore it falls within that definition.

Then in 3 Inst. 169, Coke says such a case would be forgery, and he refers to times as early as the year-books; it is a mistake to suppose that he was speaking only with reference to the statute of Elizabeth, he was quoting from earlier authorities.

Then Sir M. Foster, referring to Lewis's case decided by the judges in consultation, considers it as plain. So say all the text-writers, and there is no authority against it. Therefore I think this conviction is right, and must be affirmed.

LUSH, J.—It is conceded that if the parties had, in the first instance, put in the true date and then altered it, it would have been forgery. Then it would be absurd to hold, that to put in a false date from the beginning is not forgery. Here the deed is false in the sense of professing to be what it is not, and is calculated to deceive another.

BRETT, J., concurred.

*Conviction affirmed.*

Attorneys—James Pearce, agent for Samuel Stringer, Manchester, for the prisoner.

[CROWN CASE RESERVED.]

1869. } REGINA v. HODGKISS.\*  
Nov. 20. }

*Perjury—False Affidavit—Bills of Sale Act—Misdemeanour—Indictment—Surplusage.*

*The prisoner was indicted for wilful and corrupt perjury in making a false affidavit*

\* Coram Kelly, C.B., Martin, B., Byles, J., Blackburn, J., and Lush, J.



*before a Commissioner for taking oaths in the Court of Queen's Bench, for the purpose of getting a bill of sale filed under the Bills of Sale Act, 1854:—Held, a misdemeanour though not wilful and corrupt perjury.*

*Held also, that the conclusion of an indictment for perjury, "that so the defendant did commit wilful and corrupt perjury" might be rejected as surplusage, and a conviction for the misdemeanour was right upon such an indictment.*

CASE reserved by Pigott, B.

The prisoner was tried at the last Summer Assizes for the county of Worcester, upon an indictment which charged that he committed wilful and corrupt perjury in an affidavit sworn by him before a Commissioner for taking Affidavits in the Court of Queen's Bench.

The affidavit was sworn before a Commissioner at Stourbridge, and was made for the purpose of getting a bill of sale filed. It was material in the affidavit to state the date when the bill of sale was made, which the prisoner swore was on the 18th of December, 1868, whereas it was in fact made on the 4th of January, 1869.

The counsel for the prisoner objected that such an affidavit could not be the subject of an indictment for perjury, not being, as he contended, sworn in a judicial proceeding. I overruled the objection and left the case to the jury, who found the prisoner guilty; but I reserved the case for this Court upon the above objection, being pressed by the counsel so to do, and the prisoner was admitted to bail (1).

(1) By the Bills of Sale Act, 1854 (17 & 18 Vict. c. 36. s. 1), it is enacted as follows:—Every bill of sale of personal chattels made, after the passing of this Act, either absolutely or conditionally, or subject or not subject to any trusts, and whereby the grantee or holder shall have power either without notice and either immediately after the making of such bill of sale, or at any future time, to seize or take possession of any property and effects comprised in or made subject to such bill of sale, and every schedule or inventory which shall be thereto annexed or therein referred to, or a true copy thereof, and of every attestation of the execution thereof shall, together with an affidavit of the time of such bill of sale being made or given, and a description of the residence and occupation of the person making or giving the same, or in case the same shall be made or given by any

No counsel appeared, and the Court gave judgment as follows:—

KELLY, C.B.—The prisoner has been convicted on an indictment which charged that he, with intent to falsely register a bill of sale, made an affidavit under the Bill of Sales Act, which affidavit was intituled in the Queen's Bench, and swore to the date of the bill of sale falsely. The question is, whether that offence amounted to wilful and corrupt perjury. It is not wilful and corrupt perjury in strict legal meaning, but it is quite clear that taking a false oath in an affidavit required by the act of parliament for the purpose of procuring the registration of a bill of sale is a misdemeanour, and liable to the punishment attached to a misdemeanour. Then the indictment in this case, after alleging the facts above stated, bore the conclusion

person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process shall have issued, and of every attesting witness to such bill of sale, be filed by the officer acting as clerk of the docquets and judgments in the Court of Queen's Bench within twenty-one days after the making or giving such bill of sale (in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed), otherwise such bill of sale shall, as against all assignees of the estate and effects of the person whose goods or any of them are comprised in such bill of sale under the laws relating to bankruptcy or insolvency, or under any assignment for the benefit of the creditors of such person, and as against all sheriff's officers and other persons seizing any property or effects comprised in such bill of sale in the execution of any process of any court of law or equity authorizing the seizure of the goods of the person by whom, or of whose goods such bill of sale shall have been made, and against every person on whose behalf such process shall have been issued, be null and void to all intents and purposes whatsoever, so far as regards the property in or right to the possessions of any personal chattels comprised in such bill of sale, which at or after the time of such bankruptcy, or of filing the insolvent's petition in such insolvency, or of the execution by the debtor of such assignment for the benefit of his creditors or of executing such process (as the case may be), and after the expiration of the said period of twenty-one days, shall be in the possession or apparent possession of the person making such bill of sale, or of any person against whom the process shall have issued under, or in the execution of which such bill of sale shall have been made or given, as the case may be.

that so the defendant "did commit wilful and corrupt perjury." That, however, we think may be rejected as surplusage (2). The indictment states facts sufficient to constitute a misdemeanour, and therefore we think the conviction should stand as a conviction of a misdemeanour, and that the prisoner is liable to be sentenced to punishment for that offence.

MARTIN, B.—I am of the same opinion, and act upon the authority of the case where a person was convicted of taking a false oath before a surrogate, for the purpose of obtaining a marriage license (3).

The other learned judges concurred.

*Conviction affirmed.*

(2) In *Ryalls v. The Queen* (11 Q.B. 781; s.c. 18 Law J. Rep. (n.s.) M.C. 69) in error from a conviction upon an indictment for perjury, it was held that the whole averment of the conclusion—"and so the jurors aforesaid did say that the said J. R. R.," &c., "did commit perjury"—might be struck out, on the ground that the perjury was sufficiently alleged by the preceding part of the count; and as "perjury" is not a word of art like "murder," the concluding part of the count was immaterial. We should rather say that perjury is a word of art, but only expressive of a conclusion of law, and a mere conclusion of law from the premises is immaterial, and therefore being unnecessary may always be rejected as surplusage (1 Chit. C.L. 232 and 2 Chit. C.L. 312). There seems, therefore, to be a distinction between such a term as perjury and such words of art as describe the offence, as murder, feloniously, burglariously, &c., which are essential and cannot be rejected (4 Hawk. P.C., p. 26, Bk. 2. c. 25. s. 55).

(3) *Regina v. Chapman*. 1 Den. C.C. 432. 18 Law J. Rep. (n.s.) M.C. 152.

#### COPY OF THE INDICTMENT.

*Worcestershire*.—The jurors for our Lady the Queen upon their oath present that on the 4th day of January in the year of our Lord one thousand eight hundred and sixty-nine, one William Priest made and executed to one Sergeant Turner, a bill of sale of certain personal chattels of him the said William Priest, which bill of sale bears date the 18th day of December, in the year of our Lord one thousand eight hundred and sixty-eight; and the jurors aforesaid, upon their oath

aforesaid, do further present that one William Edward Hodgkiss, intending and desiring, according to the provisions of the statute in such case made and provided, to obtain the filing of the said bill of sale, or a true copy thereof, and contriving and intending to cause it to appear that the said bill of sale was made and given on the day and in the year last aforesaid, afterwards, to wit, on the day and year first aforesaid, came in his proper person before John Bullen Shepherd, then being a commissioner for taking affidavits in writing in the Court of Queen's Bench, and then produced a certain affidavit or writing of him the said William Edward Hodgkiss, and then by and before the said John Bullen Shepherd in due form of law was sworn, and took his corporal oath upon the Holy Gospels of God concerning the truth of the matters contained in the said affidavit, he the said John Bullen Shepherd then having sufficient competent and lawful power and authority to administer the said oath to the said W. E. Hodgkiss in that behalf. And the jurors aforesaid, on their oath aforesaid, do further present that at the time when the said W. E. Hodgkiss was so duly sworn as aforesaid, it became and was material and necessary for the purpose of obtaining the filing of the said bill of sale, or a true copy thereof, as aforesaid, in and by affidavit to state and set forth, amongst other things, the time of the said bill of sale being made or given; and the jurors aforesaid, on their oath aforesaid, do further present that the said W. E. Hodgkiss being so duly sworn as aforesaid upon his oath aforesaid before the said J. B. Shepherd so being such commissioner as aforesaid, unlawfully, falsely, corruptly, knowingly, wilfully, and maliciously, in and by his said affidavit in writing, did depose and swear, amongst other things, in substance and to the effect following, that is to say, that the said bill of sale was made and given on the day it bears date, being the said 18th of December A.D. 1868; and that the said W. E. Hodgkiss was present and did see the said W. Priest sign and execute the same on the day and the year last aforesaid; whereas in truth and in fact the said bill of sale was not made or given on the day it bears date, to wit, on the day and in the year last aforesaid, and whereas, in truth and fact, the said W. E. Hodgkiss was not present and did not see the said W. Priest sign and execute the said bill of sale on the day and in the year last aforesaid, when in truth and in fact the said bill of sale was made and given on the day and in the year first aforesaid as aforesaid, as he the said W. E. Hodgkiss then well knew; and so the jurors aforesaid, on their oath aforesaid, do say that the said W. E. Hodgkiss in manner and form aforesaid, unlawfully, falsely, wilfully, maliciously and corruptly, did commit wilful and corrupt perjury against the peace aforesaid.

We are indebted to the favour of Mr. Green, of the Clerk of Assize Office for the Oxford Circuit, for the above copy of this indictment. The indictment did not form part of the case, but it is inserted here because the form of it was referred to by the Lord Chief Baron in his judgment.

[IN THE COURT OF QUEEN'S BENCH.]

1869. { THE QUEEN v. THE JUSTICES OF  
 Nov. 25. { THE WEST RIDING OF YORK-  
               SHIRE.

*Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27)—9 Geo. 4. c. 61—Alehouse—General Annual Licensing Meeting—Adjournment—Certificate—Res Judicata.*

*B, who was the holder of a license granted to him under the 3 & 4 Vict. c. 61, for the sale of beer in a beerhouse occupied by him, gave the proper notices required by 32 & 33 Vict. c. 27 of his intention to apply for a certificate to obtain a license for the sale of beer, &c. in the said house. He made his application at the General Annual Licensing Meeting, but the certificate was refused upon the ground that he came within the 3rd sub-section of the 8th section of 32 & 33 Vict. c. 27. The meeting was held upon the 20th of August, and was adjourned to the 17th of September. On the 25th of August, D gave notice that he should apply at the adjourned meeting for a certificate in respect of the same house which he alleged was occupied by him. The justices refused to entertain the application, as they had already refused such certificate on the application of B. Upon appeal to the quarter sessions, the appeal was dismissed without hearing it on the merits:—Held, upon a rule for a mandamus to enter continuances and hear the appeal, first, that the refusal to grant the certificate to B, upon a ground personal to him, did not prevent D from making an application for a certificate in respect of the same house; secondly, that the notices having been given by D 21 days before the adjourned meeting at which the application was made by him, the requirements of section 7 of 32 & 33 Vict. c. 27, were so far complied with.*

*Held, therefore, that the rule for a mandamus must be absolute.*

Rule calling upon the keepers of the peace and justices in and for the West Riding of the County of York, to shew cause why a mandamus should not issue, commanding them to enter continuances from session to session to the next general quarter sessions of the peace, to be holden for the said West Riding, upon the appeal of Thomas Drake against the decision of

NEW SERIES, 39.—MAG. CAS.

the justices at the adjourned general licensing meeting, holden on the 17th of September, 1869, in and for the borough of Halifax, in the said Riding, refusing the application of the said Thomas Drake for a certificate under the provisions of "The Wine and Beerhouse Act, 1869."

It appeared from the affidavits that in pursuance of the 1st section of the 9 Geo. 4. c. 61, the borough justices of Halifax appointed the 20th of August, 1869, for holding the general annual licensing meeting for the borough. Prior and up to the said 20th of August, Joseph Boocock occupied the Nag's Head Inn, within the borough, as a beerhouse. On the 22nd of July, 1869, he, as required by the Wine and Beerhouse Act, 1869, gave a notice of his intention to apply at the general annual licensing meeting for a certificate to obtain a license to sell beer in the Nag's Head Inn. He also lodged a certificate of character at the office of the clerk to the justices. At the general annual licensing meeting it was proved that Joseph Boocock had, in the year 1864, while keeping the West Riding Hotel in the said borough, been convicted for knowingly permitting prostitutes to assemble in that house, and had been fined 5l. for the said offence, and that his spirit license for the said West Riding Hotel was refused in 1865. The justices refused to grant him a certificate, on the ground that he came within the 3rd sub-section of The Wine and Beerhouse Act, 1869. No notice of appeal was given by him against such refusal. At the time of making the said application for the certificate, Joseph Boocock held a license under 3 & 4 Vict. c. 61, by which he was authorised to sell beer until the 10th of October, 1869. The meeting of the 20th of August, 1869, was continued by adjournment in pursuance of the 9 Geo. 4. c. 61, to the 17th of September, 1869. The name of Joseph Boocock was kept upon the signboard of the Nag's Head, as the apparent occupier, to the 8th of October, 1869, but Thomas Drake swore in his affidavit, that on the 25th of August, 1869, he was the real resident holder and occupier of the dwelling house and premises known as "The Nag's Head." On the 25th of August the said Thomas Drake gave notice of his

D

intention to apply at the adjourned general annual licensing meeting for a certificate authorising the grant to him of a license to sell by retail beer and cider, in the house and premises occupied by him, which house was the said house called the "Nag's Head." He also lodged a certificate of character. The notices were served 21 days before the said 17th of September upon which day the adjourned meeting was held, and at that meeting the said Thomas Drake applied for a certificate, but the justices declined to re-hear the application of any person whose certificate was refused at the general annual licensing meeting, either on grounds relating to himself or to his premises, and refused to grant the certificate for which he applied. Notice of appeal was given against such refusal, and the appeal came on to be tried before the court of quarter sessions at Leeds, on the 19th of October, 1869. It was urged on behalf of the respondents, that the appellant had not given 21 days' notice prior to the general annual licensing meeting held on the 20th of August; that he was not the *bond fide* occupier of the house as required by the statute at the time of giving the notice; and that the matter had been adjudicated upon at the general meeting, so that the justices were not bound to re-hear the application.

The justices dismissed the appeal with costs (1).

*Waddy* shewed cause against the rule:—The justices at the Quarter Sessions were right in holding that the matter had been

(1) The following sections of 9 Geo. 4. c. 61 & 32 & 33 Vict. c. 27 are material:—

9 Geo. 4. c. 61, s. 3. enacts, "It shall be lawful for the justices acting at a general annual licensing meeting, and they are hereby required to continue such meeting by adjournment, to such day or days, and to such place or places within the division or place for which such meeting shall be holden, as such justices may deem most convenient and sufficient for enabling persons keeping inns within such division or place to apply for such license; provided, nevertheless, that the adjourned meeting to be holden next after such general annual licensing meeting shall not be so holden in or upon any of the five days next ensuing that on which such general annual licensing meeting shall have been holden as aforesaid; and that every adjournment of the said general annual licensing meeting shall be holden within the month of *March* in the counties of *Middlesex* and *Surrey*, and of *August* or *September* in every other county."

already adjudicated upon, and were also right in the construction which they put upon the statute. *Boocock* had given the proper notices, and had applied for a certificate in respect of this same house. The matter was investigated by the justices at the general licensing meeting, the result being that the certificate was refused. His old license remained in force up to the 10th of October, 1869; and his name remained upon the signboard up to the 8th. The justices might fairly consider that he was really the occupier of the house, and that the matter was *res adjudicata*. Next it is submitted that the intention of the Legislature was that the notices previous to the application should be given

S. 5. "Whenever the justices shall have ordered any such adjournments of the general annual licensing meeting, or shall have appointed such special sessions as aforesaid, the day, hour and place for holding every such adjourned meeting, and every such special session, shall be appointed by precept of the majority of the said justices, directed to the high constable, requiring notices, similar in form to those given at the general licensing meeting, to be affixed on the door of the church or chapel, or on some other public and conspicuous place, and to be served upon the same parties."

32 & 33 Vict. c. 27. s. 4. "From and after the 15th of July, 1869, no license or renewal of a license for the sale by retail of beer, cider, or wine, or any of such articles, under the provisions of any of the said recited acts shall (save as in this act otherwise provided) be granted except upon the production and in pursuance of the authority of a certificate granted under this act.

Any license granted or renewed in contravention of this enactment shall be void."

S. 5. "Certificates under this act shall be granted by the justices assembled at the general annual licensing meeting held in pursuance of an act of the session of the 9th year of the reign of King George the Fourth, chapter 61, intitled 'an act to regulate the granting of licenses to keepers of inns, alehouses, and victualling houses in England,' or at some adjournment of such meeting held in pursuance of the said last mentioned act," &c.

S. 7. "Every person intending to apply to the justices for a certificate under this act shall, twenty-one days at least before he applies, give notice in writing of his intention to one of the overseers of the parish, township, or place in which the house or shop in respect of which his application is to be made is situate, and to some constable or peace officer acting within such parish, township or place; and shall, in such notice, set forth his name and address, and a description of the license or licenses for which he intends to apply, and of the situation of the house or shop in respect of which the application is to be made," &c.

before the general licensing meeting. If so, the notices given by Thomas Drake were too late, for they were given after the 20th of August, the day upon which the general licensing meeting was held. By the 7th section of 32 & 33 Vict. c. 27, every person intending to apply for a certificate shall, twenty-one days at least before he applies, give notice in writing of his intention, &c. The statute refers in the 5th section to the 9 Geo. 4. c. 61, and provides that certificates shall be granted by the justices assembled at the general annual licensing meeting held in pursuance of the latter act, or at some adjournment of such meeting. By s. 10 of the latter act every person intending to apply for a license in respect of a house not heretofore kept as an inn, shall on the several Sundays between the 1st of January and the last day of February, in the counties of Middlesex and Surrey, and elsewhere between the 1st day of June and the last day of July, affix a notice on the door of the house, and upon the church doors, and shall serve a copy of such notice upon one of the overseers of the poor within the month of February in the counties of Middlesex and Surrey, and elsewhere within the month of July, and upon a constable, &c., "prior to the general annual licensing meeting." The case of a house not previously licensed is dealt with also by the 7th section of the 32 & 33 Vict. c. 27, but the earlier part already referred to applies to the present case, and it was intended that the notice of twenty-one days should be prior to the general annual licensing meeting, which, in all counties except Middlesex and Surrey, must, under section 1 of 9 Geo. 4. c. 61, be held on some day between the 20th of August and the 14th of September.

[LUSH, J.—The 3rd section of 9 Geo. 4. c. 51, provides that the justices, at the general licensing meeting, may continue such meeting by adjournment to such day or days, and to such place or places as they may deem "most convenient and sufficient for enabling persons keeping inns within such division or place to apply for such license." Why, then, should not a notice be good for such adjourned meeting though not given in time for the general meeting? Such a notice is not to be necessary in the case of an application for a renewal of a certificate.]

The adjourned meetings are simply for the purpose of finishing the business which was not disposed of at the general meeting.

[LUSH, J.—Such a construction would not accord with the provision in 9 Geo. 4. c. 61. s. 3, as to the time of holding the adjourned meeting: that is to say, not within five days of the general meeting; nor with the provision in the 5th section of the same statute, that the adjourned meeting is to be holden by precept, requiring notices similar in form to those given at the general annual licensing meeting.]

A somewhat similar question has already been before this Court in the present term—*ex parte Rushworth*. There the justices had at the general licensing meeting refused to grant a certificate, whereupon the applicant gave new notices twenty-one days before the adjourned meeting. At that meeting the justices declined to hear the application, and this Court refused a rule for a *mandamus* commanding them to do so.

[BLACKBURN, J.—It was there unnecessary to decide anything more than this: that the applicant had a remedy by appeal to the Quarter Sessions, if he had any just ground of complaint, and that having that remedy, he could not, by giving new notices, entitle himself to make a fresh application for a certificate.]

Further, it is submitted, that the adjourned meeting is a continuance of the first general meeting. The adjourned meeting is to be considered as held on the same day as the general meeting, in the same way as an adjourned Quarter Sessions is considered as being held on the same day as the original Sessions. The power to hold the adjourned meeting is given by s. 3 of 9 Geo. 4. c. 61: "It shall be lawful for the justices to continue *such* meeting by adjournment."

*Hannay* in support of the rule.—By ss. 8 and 19 of 32 & 33 Vict. c. 27, Drake had a right to the certificate, unless the justices refused it upon some or one of the grounds specified in the 8th section. He had brought himself within the terms of the 7th section, by giving twenty-one days' notice before he applied. The jurisdiction given by the statute is a special jurisdiction, to be exercised at one meeting, but that meet-

ing to be held by law on several days. If the construction suggested on the other side is adopted, the Court must insert the words "before the general annual licensing meeting." The 5th section also shews that the general meeting and the adjourned meeting are not considered as one day in law, for if that were so, the words "or at some adjournment of such meeting" would have been unnecessary. By the 3rd section of 9 Geo. 4. c. 61, the justices are to continue the meeting by adjournment to such day or days, and to such place or places, as they may deem most convenient and sufficient for enabling persons keeping inns within such division or place to apply for such license. This power was given to enable people to apply at such adjourned meeting. There is a change in the language used in the 5th and 7th sections of 32 & 33 Vict. c. 27. A reason for such change is to be found by referring to the 2nd section of 9 Geo. 4. c. 61; under that section only fifteen days' notice need be given of the time and place of holding the general meeting, so that if the construction contended for by the other side is correct, namely, that the twenty-one days' notice must be prior to the general licensing meeting, the justices might, if they pleased, shut up all the houses in the kingdom. The 32 & 33 Vict. c. 27. s. 7, provides that twenty-one days' notice shall be given, but then it makes such notice sufficient if given prior to the making of the application. He also referred to *The Queen v. The Justices of Sussex* (1), as to the adjournment of the Quarter Sessions.

BLACKBURN, J.—I think that this rule must be made absolute, and that the Quarter Sessions must hear the appeal. The 32 & 33 Vict. c. 27, refers back to the 9 Geo. 4. c. 61, which by s. 1. provides that general licensing meetings shall be held in all counties other than Middlesex and Surrey, between the 20th of August and the 14th of September. Mr. Hannay has called attention to the provision in the 2nd section, that a petty session is to be holden at least twenty-one days before the general licensing meeting, at which the justices are by

precept to appoint the day, hour and place upon and in which the said meeting is to be held, and requiring the chief constable within five days next ensuing that on which he shall have received the precept, to give notice of the time and place of holding such meeting. That may bear upon the construction of the 32 & 33 Vict. c. 61; it would give fifteen days' notice of the meeting. Then we come to the 3rd section upon which this case turns. (His Lordship read that section.) I think the intention was that the justices might adjourn the meeting to such place and time as would be most convenient for the persons who required licenses to make their applications; and that such persons were not to be dragged at great inconvenience to a distant place, at which the general meeting might be held. I think, therefore, that the application for a license might be made at the adjourned meeting if that was most convenient to the applicant. We now have to apply the 32 & 33 Vict. c. 27, for the first time. I agree with what Mr. Hannay has said, that if the Legislature had intended that the notice must be given twenty-one days before the general licensing meeting, it would have said so. But reading the 7th section of the last act with the 3rd section of 9 Geo. 4. c. 61, I think that it is not necessary that the notices should be given twenty-one days before the general meeting, and that it is sufficient if they are given twenty-one days before the adjourned meeting at which the application is made. No hardship or inconvenience would follow from this, and we have only to say that the appeal should have been heard.

Next it is said that the matter was *res adjudicata*, but it is clear that the refusal of the certificate to Boocock was personal to him and did not affect Drake at all. The Quarter Sessions must hear the case upon its merits, and decide whether the certificate shall be granted or no.

MELLOR, J.—I am of the same opinion. I find that the 32 & 33 Vict. c. 27 refers to the 9 Geo. 4. c. 61, and the 5th section of the former act states that certificates shall be granted by the justices assembled at the general annual licensing meeting, or at some adjournment of such meeting, &c. One cannot help seeing, when one reads the two statutes together,

(1) 34 Law J. Rep. (N.S.), M.C. 69; s.c. 4 B. & S. 966.

that this adjournment was not intended to be like an adjournment of the Quarter Sessions, or an adjournment of the business before the Court, but that it was intended to be an adjournment for the purpose of applications being made at such adjourned meeting, and that individual applications might be made at such meeting. Here the applicant Drake gave his notice twenty-one days before he made his application at the adjourned meeting; the period of twenty-one days is the only limitation imposed by the statute. I also agree that he was not prevented from making his application for a certificate by reason of the matter being *res adjudicata*.

LUSH, J.—I am of the same opinion. I only wish to add, with respect to the second point, that if the decision of the justices had turned upon the unfitness or bad character of the house, I should think, as at present advised, that they could not be required to adjudicate upon that matter again. But it is clear that their decision did not proceed upon any such ground; it was a decision relating to the personal character and qualification of the applicant Boocock.

*Rule absolute for a mandamus.*

Attorneys—Bower & Cotton, agents for F. Jubb, Halifax, for the prosecution; Edwards, Layton, & Jaques, agents for J. B. Holroyd, Halifax, for defendants.

1869. }  
Nov. 17. } MERCER v. WOODGATE.

*Highway—Right of Ploughing up the Surface of Footpath—Limited Dedication.*

The appellant was convicted under 5 & 6 Will. 4. c. 50. s. 72, for destroying and injuring the surface of a highway, by ploughing it up. It appeared that a footway ran through a field of which the defendant was occupier. There was no evidence of the existence of this footpath before living memory, and no evidence of any limited dedication of the way to the public. It was proved, however, that within living memory it had been used as a footway by the public, and that the appellant and the previous occupier had, during all this time, ploughed it up in the manner now complained of:—Held, that the conviction was wrong, for the proper inference from the

*facts was, that the exercise of the right of ploughing up the path had been coeval with the user of the way by the public. The way must therefore be considered as having been dedicated and accepted by the public, subject to the inconvenience of being occasionally ploughed up, and there was no legal objection to such a limited dedication of a way.*

This was a case stated by justices of Worcestershire under 20 & 21 Vict. c. 43.

Upon the hearing of an information preferred by the respondent against the appellant under sect. 72 of the 5 & 6 Will. 4. c. 50 (1), that the appellant on the 25th of September, 1868, at the parish of Bellbroughton, in Worcester, did unlawfully and wilfully destroy and injure the surface of a highway there situate, leading from Bellbroughton to Fairfield and Bromsgrove, by then and there ploughing up the same a certain distance, to wit, fifty yards and more, thereby doing injury to the highway, to the amount of 20s., contrary to the statute, &c., the appellant was convicted, and ordered to pay the sum of 1s., to be paid and applied according to law, and also to pay to the respondent the sum of 16s. for his costs.

The following facts were either proved before the justices or admitted by both parties:—

The appellant is a farmer, and the occupier of a certain field of arable land, in the parish of Bellbroughton, across which is a public footpath leading from the village of Bellbroughton to the Stour-bridge and Bromsgrove turnpike road, and the hamlet of Fairfield. The appellant, on the 25th of September, 1868, in due course of farming, ploughed the field, and in so doing ploughed up and destroyed all trace of the footpath in question.

(1) By 5 & 6 Will. 4. c. 50. s. 72, if any person shall wilfully ride upon any footpath or causeway by the side of any road, made or set apart for the use or accommodation of foot-passengers, or shall wilfully lead or drive any horse, &c., upon any such footpath or causeway . . . or shall cause any injury or damage to be done to the said highway, or the hedges, posts, &c., thereof, or shall wilfully obstruct the passage of any footway, or wilfully destroy or injure the surface of any highway, &c., every person so offending shall forfeit and pay for each and every such offence any sum not exceeding 40s.

The appellant *bonâ fide* claimed the right to plough, and to continue to plough, the footpath, and the previous occupier had so ploughed at all times, within living memory.

There was no evidence before the justices of the existence of the footpath, or the tillage of the land, before living memory, and no witnesses were called on behalf of the appellant, nor was any evidence given by the appellant of any partial or limited dedication of the land, or of any reservation by him of the right to plough up the land along the line of the footpath, except as otherwise appears by this case.

On the part of the respondent it was contended that the footpath was a highway within the meaning of 5 & 6 Will. 4. c. 50, and that under the circumstances the justices should convict the appellant under section 72 of that act for the destroying and injuring the surface of a highway.

On the part of the appellant it was contended that the footpath was not a highway within the meaning of the 5 & 6 Will. 4. c. 50, but that if it were, he and the previous occupiers having ploughed it up as long as it was known to have existed, the public had a right only to the use of the footpath, subject to its being so ploughed up.

The justices, however, being of opinion that the footpath was a highway within the meaning of 5 & 6 Will. 4. c. 50, and that the appellant having destroyed and injured the surface of the footpath, they were bound in law to find the appellant's acts to be unlawful, no further evidence than herein appears having been offered to them of any reservation by the owner at the time of dedication, or presumed dedication, of a right to plough up the surface of the footway, and accordingly they gave their determination against the appellant in the manner before stated.

The question for the opinion of the Court is, whether the footpath is a highway within the meaning of the 5 & 6 Will. 4. c. 50, and, if so, whether the justices were bound in law under the circumstances above stated to convict the appellant of an unlawful act, or whether, upon the facts set forth, they would have been justified in finding the acts complained of to

be lawful, and whether they had jurisdiction. If the Court should be of opinion that the justices were bound to convict the appellant, and that their jurisdiction was not ousted in consequence of the land having been ploughed at all times when necessary within living memory, then the conviction is to be affirmed, otherwise it is to be quashed.

*Harington* for the appellant. The appellant was improperly convicted. The case of *Pelham v. Pickersgill* (2) shews that it will be presumed that the right claimed by the owner of the soil had a legal commencement, where the enjoyment of it appears to have been coeval with the highway. *Stafford v. Coyney* (3) is an authority in favour of the limited dedication of a highway; and in *Fisher v. Prowse* (4), and *Cooper v. Walker* (5), the law upon this subject was fully considered, and it was laid down that a way may be dedicated subject to an obstruction to the passers. Either there has been a dedication of this highway subject to such an obstruction, or there has been no dedication at all.

*Rew*, for the respondent. The conviction was right. Upon a dedication of a highway the freeholders cannot reserve a right to plough it up. Such a reservation is inconsistent with the dedication.

[BLACKBURN, J.—Then if there cannot be such a limited dedication, there is no dedication at all.]

A highway may be dedicated subject to the maintenance of an existing nuisance, as in *Fisher v. Prowse* (4) and *Cooper v. Walker* (5), but cannot be dedicated subject to a right to create future nuisances upon it. In *James v. Hayward* (6), in trespass for throwing down a gate, the defendant justified because the gate was placed across the highway to the nuisance of the king's subjects; the plaintiff replied that he set up two posts on each side of the way, and hung the gate upon one of the posts for the preservation of the springs of the wood from cattle so

(2) 1 Tem. Rep. 660.

(3) 7 B. & C. 257.

(4) 31 Law J. Rep. (N.S.) Q.B. 212; s. c. 2 B. & S. 770.

(5) 31 Law J. Rep. (N.S.), Q.B. 214; s. c. 2 B. & S. 770.

(6) Cro. Car. 184.



that the subjects might pass that way without impediment. The defendant demurred, and the first question was whether the erecting of a gate across a highway which might be opened and shut at the pleasure of the passengers was a common nuisance in itself in law, and it was held by Hyde, C.J., and two other judges, that it was a nuisance, for it was not so free and easy a passage as if there had been no such enclosure.

[BLACKBURN, J.—Do you say that if the owner of land put up a board saying, "I grant a right of way across my land, but I do so subject to my right of ploughing it up," that the dedication would be good and the reservation void?]

In *The Queen v. Charlesworth* (7), a case relating to the obstruction of a highway, Lord Campbell says—"Then it is argued that a right has been reserved by the landowner to make as many rail and tram roads as he pleases in all time to come for the convenient use of his coal pits. But if this would be a nuisance, there could be no such right reserved. No authority has been cited on the reservation of a right *in futuro* to put up as many gates or make as many tramways as the landowner thinks proper. No such reservation could exist if the acts were a nuisance."

[BLACKBURN, J.—I observe that the expressions of Patteson, J., in the same case, are more guarded. The learned Judge says—"We must consider these works to be a nuisance, and we cannot suppose a reservation of right so large as that claimed."]

In *Wellbeloved on Highways*, p. 443, is this passage—"It may also be stated, as clearly deducible from Lord Ellenborough's decision in *Rea v. Cross* (8), that it is a common nuisance to plough up a public footpath, not only because the public are obstructed in their accustomed passage, but more particularly as all traces of the way are thereby obliterated and the public are left in ignorance as to the route which they ought to pursue . . ." In one case, *Griesley's case* (9), where an information was laid against the defendant for stopping up a highway, the word was *obstupabat*; it was proved in evidence that

he ploughed it up, and the Court resolved that it did well maintain the information. In *Bateman v. Burge* (10) it was held that if there be a public footway with a stile across it of a certain height, no one has a right to remove the stile and put up a gate of greater height.

[COCKBURN, C.J., referred to *Rea v. Northampton* (11), where it was held that a bridge may be a public bridge, though it is only used by the public at such times as it is dangerous to pass the river.]

In *Morant v. Chamberlain* (12) a distinction is drawn between a right to place things causing inconvenience to the public upon a highway, and a right to obstruct it altogether. He also referred to the notes to *Dovaston v. Payne* (13).

COCKBURN, C.J.—I am of opinion that our judgment should be in favour of the appellant. It appears from the evidence that, as far back as living memory went, the public had enjoyed the right to this footpath, and that the appellant and the previous occupiers of the field through which the way passed had, during the same time, been in the habit of ploughing it up. I think that we must take it as the only proper inference from this evidence, that the exercise of the right of ploughing up the footpath by the owner of the soil had been coeval with the use of the way by the public, so that the dedication of the way was subject to a reservation of the right to plough it. There is no obligation upon anyone to dedicate a way to the public, and if he proposes to do so, subject to certain limitations, the public are not bound to accept the dedication, and the owner of the soil cannot be taken to grant more than he professes to grant. If, therefore, he says, "You may have the way, but I shall reserve to myself the right of ploughing it up from time to time," the way can only be accepted subject to this reservation. The case of *Rea v. Northampton* (11), to which I referred during the argument, is an authority to shew that a bridge or way may be open to the public during part of the year only; and if there

(10) 6 C. & P. 391.

(11) 2 M. & S. 262.

(12) 30 Law J. Rep. (N.S.) Exch. 299; s.c. Hurl. & N. 541.

(13) 2 Smith's L. Ca. 6th ed. 133.

(7) 16 Q.B. Rep. 1012.

(8) 3 Campb. 224.

(9) 1 Vent. 4.

was no such limited dedication here, I agree with my brother Blackburn, that the respondent is upon the horns of a dilemma, and is bound to admit that there was no highway at all. If it were otherwise there would be a great deal of injustice, since everybody knows that footpaths such as these are common in agricultural districts, and it has never hitherto been proposed to convert them into gravelled roads, and to hold that in such cases there is an absolute dedication to the public of part of the field, preventing the owner in spite of his reservation from ploughing it up. It would not only be unjust to the occupiers, but inconvenient to the public, who would lose the benefit of a partial dedication. I think that there is nothing in the law to prevent a right of way being qualified to the extent contended for by the appellant, and that there is abundant evidence that such a qualification has always subsisted in the present case.

BLACKBURN, J.—I am of the same opinion. I quite agree that where a highway is absolutely dedicated to the public, which is a voluntary act on the part of the owner of the soil, they have a right to prevent anything in the nature of a nuisance upon it, and that ploughing up the highway would *prima facie* be a nuisance. Where there is a general dedication of a footpath the parish may be liable to repair it, so that a soft road might be converted into a hard one. It appears, however, that this way was dedicated subject to the right of ploughing it up, and Mr. Rew contends that this reservation is void either because it enables the owner of the soil to stop up the highway and exclude the public, or because it effaces the path to such an extent as to interfere with their right. But in the case of *Fisher v. Prowse* (4), which has already been referred to, it was held that a highway might be dedicated subject to certain conditions; and that if the use of the soil as a way is offered by the owner to the public, under given conditions and subject to certain reservations, and the public accept the use under such circumstances, there can be no injustice in holding them to the terms on which the benefit was conferred. In the present case the benefit of the way was offered to the public subject to the conditions that it might be occasionally ploughed up, and

though this, for a time, may be inconvenient to the public, they may well submit to it for the sake of the right which they enjoy in the intervals of ploughing.

MELLOR, J.—I am of the same opinion. It is quite clear that the practice of ploughing up the soil of the footpath has been contemporaneous with the right of passage over it. Under these circumstances, can we do anything but infer that there was a limited dedication of the highway? The cases cited by Mr. Rew only shew that, when a highway has once been absolutely dedicated to the public, the freeholder cannot reserve to himself the right of destroying the road or rendering it impassable. But when we find what was the true character of the dedication here, it would be very unjust if effect could not be given to it.

HANNEN, J.—I am of the same opinion. The effect of the authorities is, that where there is an unrestricted dedication of a highway, there can be no right to plough up the soil. But these authorities do not touch the question whether there can be a restricted dedication of a highway, and this question is answered by *Fisher v. Prowse* (4) in the affirmative. And I should be very sorry to arrive at a different conclusion, because we know that the effect of it would be that, wherever footpaths like the present exist, they would at once be grubbed up and destroyed by the owners of the soil. In *Poole v. Huskisson* (14), Parke, B., explains that to constitute a valid dedication to the public of a highway, there must be an *intention* to dedicate, there must be an *animus dedicandi* of which the use by the public is evidence, and no more, and a single act of interruption by the owner is of much more weight upon a question of intention than many acts of enjoyment. Here the evidence as to the ploughing up the footpath was all one way. If Mr. Rew's argument were well founded, and there could be no such partial dedication as the present one, there would be no dedication at all.

*Conviction quashed.*

Attorneys—Wood, Street & Hayter, for appellant; Skilbeck & Griffith, agents for Harward, Shepherd and Harward, Stourbridge, for respondent.

(14) 11 Moo. & W., p. 830.

## [IN THE COURT OF QUEEN'S BENCH.]

1869. } THE POOR LAW COMMISSIONERS  
 Nov. 6. } FOR IRELAND, *appellants*, v.  
           } THE SELECT VESTRY OF  
           } LIVERPOOL, *respondents*.

*Irish Poor—Desertion by Husband—  
 Irremovability of Wife and Children—  
 8 & 9 Vict. c. 117. s. 2.*

*The wife and unemancipated children of an Irishman, all born in Ireland, becoming chargeable to an English parish by reason of the desertion of the husband, cannot, in his absence, be removed to the Irish settlement of the wife under the 8 & 9 Vict. c. 117. s. 2. That section makes no provision for such a case, but contemplates their removal to the husband's place of settlement only, as members of his family, and with him.*

At a petty sessions of the peace for the borough of Liverpool, holden on the 28th of May, 1868, a warrant for the removal of Ellen Keating and her two children, Margaret and John, of the respective ages of thirteen and two years, from the parish of Liverpool to the union of Tullamore, was granted by two justices of the borough upon the examination of the said Ellen Keating.

Notice of appeal having been given against the said warrant, pursuant to the 26 & 27 Vict. c. 89. s. 7, the following SPECIAL CASE was stated under the 12 & 13 Vict. c. 45. s. 11 :—

Ellen Keating is the lawful wife of John Keating, and the said Margaret and John, in the said warrant mentioned, are their legitimate and unemancipated children.

On the 30th of September, 1867, Ellen Keating and her said two children, Margaret and John, were admitted into the Liverpool workhouse, as the wife and children, and known to the respondents to be the wife and children respectively of the said John Keating, and there remained until removed to Tullamore Union, Ireland, by warrant dated the 28th of May, 1868.

The said John Keating was born in Ireland, but not within the district of the union of Tullamore, nor has he ever resided for three years within the district of the said union.

The said Ellen Keating was born within  
 NEW SERIES, 39.—MAG. CAS.

the district of the union of Tullamore, and both of the said children, Margaret and John, were born in Ireland.

On the 31st of October, 1867, the respondents laid an information on oath before the magistrates against the said John Keating, the husband, for having on the said 30th of September, 1867, ran away from the parish of Liverpool, leaving and deserting his said wife, Ellen, and his two children, Margaret and John, chargeable to the said parish of Liverpool, and a warrant was granted thereon; and on the 17th of September, 1868, being after the appeal in this case was entered at the Court of Quarter Sessions for the borough of Liverpool, and after the same was respited to the next Quarter Sessions of the said borough, he was brought before the stipendiary magistrate for the said borough and convicted of the said offence.

The warrant of removal was issued in the absence of the said John Keating, and without any summons having been issued requiring his attendance before the magistrates for the said borough, at the sessions at which the said warrant was granted.

At the time of granting the said warrant of removal, viz., the 28th of May, 1868, and up to and until the time of his apprehension, viz., on the 17th of September, 1868, the said John Keating, the husband, was living and residing in Hull, in the county of Yorkshire, and not in and within the said parish of Liverpool, but the respondents did not, at the time such order was made, know where the said John Keating, the husband, was or where he could be found, nor did it appear, either from the examination of the said Ellen Keating, the warrant of removal, or otherwise, that enquiry was made as to the said John Keating, or as to his place of birth.

The questions for the consideration of the Court are,

1st. Whether a warrant of removal, under the above facts, should have been granted by the magistrates.

2nd. If so, whether it was rightly granted for removal to the Tullamore Union.

If the Court shall be of opinion in the affirmative of both the above questions, then the appellants agree that a judgment, in conformity with such decision and for

E

such costs as the Court may adjudge, may be entered on motion by the respondents at the sessions next or next but one after such decision shall have been given.

If the Court shall be of a contrary opinion on either of the above questions, then the respondents agree that a judgment in conformity with such decision, and for such costs as the Court may adjudge, may be entered on motion by the appellants at the sessions next or next but one after such decision shall have been given.

*Mellish* (L. Temple with him) for the appellants.—The question turns on the 8 & 9 Vict. c. 117. s. 2, and the point for decision is, who is the person really chargeable? By the 4 & 5 Will. 4. c. 76. s. 56, all relief given to or on account of the wife, or to or on account of any child or children under the age of sixteen, &c., shall be considered as given to the husband of such wife, or to the father of such children; and this enactment is in perfect keeping with the 8 & 9 Vict. c. 117. s. 2, which deals with persons not settled in England becoming chargeable to any parish therein by reason of relief given to the wife or children. The husband, then, notwithstanding his desertion of his family, is the person chargeable, and the wife and children can only be removed under the 8 & 9 Vict. c. 117. s. 2, and the amending Acts, with him, and as part of his family, to his own place of settlement, as defined by the 25 & 26 Vict. c. 113. s. 2; that is to say, to the place in Ireland where the justices shall find the person to have been born or have last resided for the space of three years. If, as contended on the other side, the wife can be removed with her children to her own maiden settlement, it follows that they must be so removable notwithstanding that the husband, having deserted them, was known to be resident and earning his livelihood in some other parish. The statutes in question have not in fact made any provision for such a case as the present.

*G. Francis* for the respondents.—The case is within the mischief which it was the object of the statutes in question to remedy, and the Court will, if possible, put such a construction upon them as will carry out their intention. The wife and

children were actually chargeable to the removing parish, and it was for the offence of leaving them so chargeable that the husband was apprehended and convicted; by his absence the wife was constituted the head of the family, and she and her children were therefore properly removed to her maiden settlement. *The King v. The inhabitants of Cottingham* (1).

[*HAYES, J.*, referred to *The Queen v. Much Hoole* (2)].

He also cited *The Queen v. All Saints, Derby* (3).

*Cur. adv. vult.*

The judgment of the Court (4) was now delivered by

*COCKBURN, C.J.*—This was a case stated by consent under the statute 12 & 13 Vict. c. 45, upon an appeal against an order or warrant made by two justices of the peace for the borough of Liverpool on the 28th of May, 1868, for the removal of Elizabeth Keating and her two children from the parish of Liverpool, where they had become chargeable, to the union of Tullamore, in Ireland, the birth-place of the said Elizabeth Keating.

The pauper, Elizabeth Keating, was the wife of one John Keating who was an Irishman. Neither of them had acquired any settlement in England; the children were the issue of the marriage and were both born in Ireland; they were infants and unemancipated, one being aged 13, and the other 2 years.

At the time when Elizabeth Keating and the children became chargeable, and also at the time of the making the warrant of removal and of executing it, John Keating was not living in the parish of Liverpool. He had some time previously deserted his wife, and was living at Hull, in Yorkshire, but the respondents did not then know where he was or where he could be found.

He was, consequently, not summoned or brought before the removing magistrates, nor does it appear from the ex-

(1) 7 B. & C. 615.

(2) 21 Law J. Rep. (N.S.) M.C. 1; 17 Q.B. Rep. 548.

(3) 19 Law J. Rep. (N.S.) M.C. 14; 14 Q.B. Rep. 207.

(4) Cockburn, C.J., Lush, J., Hannen, J., Hayes, J.

amination, warrant of removal, or any statement in the case, that enquiry was made as to him or as to his place of birth. In point of fact he was not born in Tullamore nor had he resided there for three years.

Under these circumstances it was contended, on behalf of the appellants, that the warrant of removal of the wife and the two children to Tullamore, the place of the wife's birth, was invalid, and ought not to have been granted, and we are of that opinion.

The statute under which the removal of Irish paupers is now regulated, is the 8 & 9 Vict. c. 117, as amended by the 10 & 11 Vict. c. 33, the 24 & 25 Vict. c. 76, and the 26 & 27 Vict. c. 89. The material clause is the 2nd section of the first-mentioned statute. The language of the section, according to its plain natural meaning, appears to require that where there is a husband, as well as a wife and children liable to be removed, they are all to be removed together.

With regard to the place to which the removal is to be made, by the 4th section of the 8 & 9 Vict. c. 117, the justices of a county or borough were empowered to make regulations for the removal of "such poor persons, their wives and children." But this section is now repealed by statute 26 & 27 Vict. c. 89. s. 3, and by the 25 & 26 Vict. c. 113. s. 2, the warrant of removal was required to contain (amongst other things) the name of the place in Ireland where the removing justices shall find such poor person to have been born, or to have last resided for three years. And a copy of the warrant was thereby required to be given to the person or "the head of the family" about to be removed by virtue of it. This shews that the legislature intended that where there was a head of the family, the removal was to be to his or her place of birth or place of residence, and the 26 & 27 Vict. c. 89, which makes further regulations concerning these removals, and gives the right of appeal by the Poor Law Commissioners of Ireland, prescribes the particular form of warrant used in this case.

No provision is made in any of these acts or in any of the former statutes which were repealed by the 1st section of the 8

& 9 Vict. c. 117, where a woman has been deserted by her husband, for her being removed without him or being removed to any other place than the husband's settlement if he were living; and upon a review of the statutes, and the decisions upon them, we think that such a case is left unprovided for.

In *The King v. Cottingham* (2) which case arose on the construction of a former act, the 59 Geo. 3. c. 12, which is now repealed, but which in its enactments closely resembled the 8 & 9 Vict. c. 117. s. 2, it was held that the wife of an Irishman, who had no settlement in England and had deserted her, might be removed without him to her own maiden settlement, which revived on her desertion by her husband. But it was there laid down by Bayley, J., in delivering the judgment of the Court, that the statute of the 59 Geo. 3. c. 12. s. 83, which in this respect is undistinguishable from the present, did not authorise the removal of the wife alone to the place of birth of her husband, and that as the husband having quitted the parish could not be removed to Ireland, so the wife could not be removed there without him, and that the case was therefore not within the act. It had been previously held in *The Queen v. Leeds* (5), that the wife and unemancipated children of a Scotchman, who had not deserted his wife but was living with her, could not, even with his consent, be removed to her maiden settlement, but that all were removable with the husband to Scotland. In *The Queen v. All Saints, Derby* (3), the question of the construction of the present act arose in the case of the children of an Irish father by an Irish mother. The mother had died, and the children had been deserted by the father. It was there decided that they were removable to the parish of their birth in England and not to Ireland, under the 2nd section of the statute. Coleridge, J., there laid down that according to the act the father must be dealt with as the subject of removal, and Wightman, J., said that the statute for the purpose of removal "applied directly to the father only, and to the children not otherwise than incidentally as a

(5) 5 Q.B. Rep. 916; s. c. 13 Law J. Rep. (n.s.) M.C. 107.

part of his family, and that if the father cannot be removed, there is no power over the children." Coleridge, J., also observed that the section might mean that, if the father were summoned, the order might be made at the time and place named, whether he appeared or not, or at any time when he did come, and that if he were absent, service of a summons upon him must be shewn, so that at all events the proceedings should relate to him. This case, which recognised the previous case of *The King v. Cottingham* (1), appears to make it clear that the wife and children cannot be removed except with the father, and at all events as a part of the father's family, and in a proceeding having reference to him; and therefore, at all events, a warrant of removal which ignores the father and the father's place of birth, and removes to that of the mother, must be considered as unwarranted by the statute.

The subsequent cases of *The Queen v. Much Hoole* (2) and *The King v. St. Giles, Cripplegate* (5), are substantially in accordance with the cases previously mentioned, as shewing that neither a wife deserted by her husband, an Irishman, nor a daughter, though unemancipated and becoming chargeable in a different parish from that in which her parents, who were Irish, without a settlement, resided, can be removed to Ireland under the statute now in question; and as we have had no instance brought to our notice of such a removal having been made, and have been unable to discover any such case, we consider that this order of removal ought to be reversed as illegal, and that the respondent should, according to the 7th section of the 26 & 27 Vict. c. 89, pay the expenses of the preliminary enquiry and appeal, and also those of maintaining the persons removed, and of conveying them back to Liverpool.

#### *Order of removal quashed.*

Attorneys—Field, Roscoe & Co., agents for Marsh & Co., Warrington, for appellants; Monckton & Monckton, for respondents.

(5) 17 Q.B. Rep. 636; s. c. 21 Law J. Rep. (N.S.) M.C. 26.

1869. } COCKER, appellant v. CARDWELL  
Nov. 17. } and others, respondents.

*Nuisance Removal Acts*, 18 & 19 Vict. c. 121. s. 12; 23 & 24 Vict. c. 77. s. 13; 29 & 30 Vict. c. 90. ss. 14, 21—*Information by inhabitant under 23 & 24 Vict. c. 77. s. 13—Summons without previous notice to abate nuisance.*

*Under 23 & 24 Vict. c. 77. s. 13 (amended by 29 & 30 Vict. c. 90, part 2), a justice of the peace upon the complaint of any inhabitant of any parish or place of the existence of any nuisance on any private premises in the same parish or place, may issue a summons requiring the person by whose act, default, permission, or sufferance, the nuisance arises, &c., or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before justices, &c., without proof of the service of a previous notice to abate the nuisance.*

CASE stated by justices of the West Riding, under the 20 & 21 Vict. c. 43.

The respondents were summoned before two justices on an information by the appellant laid under section 13 of the 23 & 24 Vict. c. 77 (1), charging them with

(1) By 18 & 19 Vict. c. 121 (The Nuisances Removal Act, 1855) s. 11, a power of entry upon premises is given to the local authority, for the purpose of ascertaining the existence of nuisances, and by s. 12. In any case where a nuisance is ascertained by the local authority to exist, &c., they shall cause complaint thereof to be made before a justice of the peace, and such justice shall thereupon issue a summons requiring the person by whose act, default, permission, or sufferance, the nuisance arises, or continues, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before any two justices, in petty sessions assembled, at their usual place of meeting, who shall proceed to inquire into the complaint, and if it be proved to their satisfaction that the nuisance exists, or did exist, &c., the justices shall make an order on such person, owner or occupier, for the abatement, or discontinuance, and prohibition, of the nuisance, &c.

By 23 & 24 Vict. c. 77. s. 13. "Upon complaint before a justice of the peace by any inhabitant of any parish or place of the existence of any nuisance on any private premises in the same parish or place, such justices shall issue a summons requiring the person by whose act, default, permission, or sufferance, the nuisance arises, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance

having on the 23rd March, 1869, committed a nuisance by allowing a certain chimney at their mill at Savile town, near Dewsbury, to send forth black smoke in such quantity as to be a nuisance. On the 19th April, 1869, the information came on to be heard. It was proved that the appellant was an inhabitant of the parish or place in which the nuisance complained of arose, and he gave evidence in support of the information. Mr. Wilson Hemingway also proved that on the 8th June, 1868, he informed the defendants of his appointment as smoke inspector for the Dewsbury Union district by the West Riding Association for the Suppression of the Smoke Nuisance, and that on the same 8th June, 1868, he left a copy of the notice hereinafter set out at the respondents' place of business. Also that on the 20th October, 1868, he personally served the appellant, James Cardwell, with a notice of which the following is a copy.

West Riding Association for the Suppression of the Smoke Nuisance, statutes 18 & 19 Vict. c. 121; 24 & 24 Vict. c. 77; 29 & 30 Vict. c. 90.

I hereby give notice that having been appointed by the above-named association

arises, to appear before two justices in petty sessions . . . who shall proceed to inquire into the complaint and act in relation thereto as in cases where a complaint is made by a local authority under section 12 of the Nuisances Removal Act, 1855, and as if the person making the complaint were such local authority; provided always, that it shall be lawful for the said justices, if they see fit, to adjourn the hearing or further hearing of such summons for an examination of the premises where the nuisance is alleged to exist, and to require the admission, or authorise the entry, into such premises of any constable or other person or persons, &c., provided also that the costs in the case of every such application shall be in the discretion of the justices.

By 29 & 30 Vict. c. 90 (part 2) s. 21, the nuisance authority or chief officer of police shall, previous to taking proceedings before a justice, under section 12 of the Nuisances Removal Act, 1855, serve a notice on the person by whose act, default, or sufferance, the nuisance arises or is continued, or if such person cannot be found or ascertained, on the owner or occupier of the premises on which the nuisance arises, to abate the same, &c.

By s. 14. The expression "Nuisances Removal Acts" shall mean the acts passed in the years following of the reign of her present Majesty, that is to say, 18 & 19 Vict. c. 121, 23 & 24 Vict. c.

to the office of smoke inspector for the Dewsbury Union district, I have already commenced discharging the duties of that appointment, and am now making observations of such chimneys as appear to me to be most noxious with the view of laying information according to law for the abatement of nuisances arising from dense smoke. All the chimneys within the district will be inspected as early as possible, and if you have not already adopted some proper and satisfactory means for the prevention of smoke, you are hereby required to do so without further delay, or summary legal proceedings will be taken against you without further notice for any nuisance which may arise from your neglect.—Yours, &c.,

WILSON HEMINGWAY.

Westgate, Dewsbury.

Upon the hearing the following questions arose:—Upon an information by an inhabitant under section 13 of the Act 23 & 24 Vict. c. 77, is a notice required to be given as under section 21 of the 29 & 30 Vict. c. 90, by the nuisance authority or chief officer of police? and, if so, was the notice given to the respondents sufficient for that purpose? The justices were of opinion that a notice was required, and that the notice given was insufficient. The question for the opinion of the Court is, whether the justices were right in holding that a notice was required, and that the notice before referred to, and given at the time proved, was insufficient?

*Jelf*, for the appellant. In the absence of express words, it must be held that justices may issue a summons under 23 & 24 Vict. c. 77. s. 13. without proof of a previous notice. The words in section 12 of 29 & 30 Vict. c. 90, which apply to such a notice, are strictly limited to proceedings under the Nuisances Removal Act, 1855. And there are reasons why such a notice should not be required where the summons is taken out under section 13 of 23 & 24 Vict. c. 77, for the justices have power to adjourn the inquiries if necessary, and have also a discretion as to

77, as amended by this part of this act, and this part of this act shall be construed as one with the said acts.

costs, which is a sufficient check against vexatious proceedings. He cited *Glen's Law of Public Health*, 5th ed. p. 482.

No counsel appeared for the respondents.

COCKBURN, C.J.—I am of opinion that the appellant's construction of 23 & 24 Vict. c. 77. s. 13. is right, and that upon an information by an inhabitant under this section no notice is required to be given, as under 29 & 30 Vict. c. 50. s. 21. This omission appears to me to be *per incuriam*, and not by design. By the first of the Nuisance Removal Acts to which we have been referred, 18 & 19 Vict. c. 121, sections 11 & 12, the local authority may, without any previous notice, put the law in motion for the abatement of a nuisance by a summons requiring the person offending to appear before justices. The second act, 23 & 24 Vict. c. 77, gives this jurisdiction to justices upon the complaint of a private individual, and there again no notice other than the summons itself is required, though there is a proviso enabling the justices, if they see fit, to adjourn the hearing for an examination of the premises where the nuisance is alleged to exist. We come now to the third act, 29 & 30 Vict. c. 90, and this act by section 21 requires that before the nuisance authority shall apply for a summons before a justice under 18 & 19 Vict. c. 121. s. 12, they shall serve a notice on the person by whose act the nuisance arises to abate the same within a specified time. This notice gives no power to the local authority to abate the nuisance itself, for this power can only be exercised by means of an order of justices; yet still the local authority is bound to serve the offender with a notice. Now it is plain that if such a notice is required in a proceeding before justices on the part of the local authority, in whom some confidence may reasonably be placed, then *a fortiori* it ought to be required in proceedings set on foot by private individuals who are not competent to pass an equally clear judgment upon the existence of a nuisance. It is far more probable that vexatious proceedings should be instituted by persons who have not had the advantage of the power of entering upon the premises where the nuisance is said to exist, conferred by

section 11 of the first act. But it seems that the framer of the last act forgot to apply the provisions as to notice to the intermediate act, though there it was more necessary than in the two others. It is true that it is provided that these three acts shall be construed as one, and they are *in pari materia* with each other. But we cannot import into the second act words which are omitted from it, and in their absence we must hold that no notice was necessary.

BLACKBURN, J.—I am of the same opinion, and think that the justices have not correctly construed these acts. Looking at the manner in which the acts are prepared and incorporated with each other, I can only say that small blame is due to those who fail in understanding them. Many complaints have been made as to the manner in which the statutes relating to the public health are framed, but the evil has never been remedied. In the present case we have an act containing one set of provisions, a second act amending and enlarging the first act, and a third act which is to be read as one with the two preceding acts as amended by the third act. The natural result of this is that the Legislature have said one thing when they meant another. The first act says that the local authority must go before justices to enforce the abatement of a nuisance; the second that the justices upon the complaint of a private individual may proceed as if the local authority had come before them. Then it seems to have occurred to the Legislature that it would be a hard case if the person alleged to have caused the nuisance were summoned without a notice, and that provision should be made accordingly. I quite agree that it is much more proper that such a notice should be given where a private individual applies for the summons than where the application is by the local authority; but I can only suppose that the draughtsman had forgotten the existence of section 13 of the second act. I have no doubt that this was *casus omissus*, and that the Legislature would have inserted the right words if their attention had been called to the second act; but we cannot supply the omission.

MELLOR, J., concurred.



HANNEN, J.—I am also of opinion that the omission was very likely owing to the clumsy and inefficient way in which the acts are prepared. It is, however, just possible that the Legislature may have thought that the local authority, which is invested with extensive powers, should give a notice, which they would not require from a private individual.

*Judgment for the appellant.*

Attorneys—Chester & Urquhart, agents for T. W. Clough, Huddersfield, for appellant.

[CROWN CASES RESERVED.]

Nov. 13. }  
1869. } THE QUEEN v. MARTIN.

*Coinage — Procedure — Indictment for knowingly having counterfeit coin in possession after previous conviction for uttering.*

*Upon the trial of an indictment for the felony of having committed a misdemeanour within either of sections 9, 10, or 11 of 24 & 25 Vict. c. 99 relating to the unlawful possession and uttering of counterfeit coin after a previous conviction for a misdemeanour within those sections; the prisoner must first be arraigned upon the subsequent offence, and evidence respecting the subsequent offence must first be submitted to the jury, and the previous conviction must not be inquired into until after the verdict on the charge of the subsequent offence.*

CASE stated by Forsyth, Queen's Counsel, sitting as Commissioner at the Leeds Summer Assizes:—

William Martin was tried before me on the charge of being unlawfully in possession of counterfeit coin, he having been before convicted of unlawfully uttering counterfeit coin (1).

At the outset of the case Mr. Forbes, the counsel for the prosecution, called a witness and proposed to give in evidence a certificate to prove the previous conviction.

(1) The first count of the indictment was as follows:—

*Yorkshire, West Riding Division to wit.*—The jurors for our Lady the Queen upon their oath present that William Martin on the 10th day of April, in the year of our Lord one thousand

tion of the prisoner. Mr. Middleton, the counsel for the prisoner, objected, and I, having regard to the 37th section of the Act 24 & 25 Vict. c. 99, refused to receive the evidence at that stage of the case. Evidence was then given to shew that the prisoner was guilty of the subsequent offence charged, but I refused to allow evidence to be given of the previous conviction until the jury should give their verdict upon the subsequent charge. At the close of the case for the prosecution, the counsel for the prisoner contended that there was no case of felony to go to the jury, for that the offence of being in

eight hundred and sixty-nine, unlawfully had in his custody and possession fifteen pieces of false and counterfeit coin resembling and apparently intended to resemble and pass for fifteen pieces of the Queen's current silver coin called crowns, five pieces of false and counterfeit coin resembling and apparently intended to resemble and pass for five pieces of the Queen's current silver coin called florins, and five pieces of false and counterfeit coin resembling and apparently intended to resemble and pass for five pieces of the Queen's current silver coin called shillings, knowing the said several pieces of false and counterfeit coin to be false and counterfeit, and with intent unlawfully, fraudulently, and deceitfully to utter and put off the same, against the form of the statute in such case made and provided. And the jurors aforesaid, upon their oath aforesaid, do say that heretofore and before the committing of the offence hereinbefore mentioned, to wit at a special session and delivery of the gaol of our Lady the Queen holden at Lincoln, in and for the county of Lincoln, on Friday, the 11th day of December, in the twenty-first year of Her present Majesty's reign, the said William Martin, in the name of Martin Kelly, was in due form of law convicted on a certain indictment against him, for that he on the 14th day of November, in the twenty-first year of the reign aforesaid, at the parish of Gainsborough, in the county of Lincoln, did unlawfully utter and put off to Mary Pycock one counterfeit half-crown, knowing the same to be false and counterfeit, against the form of the statute in such case then made and provided. And that the said William Martin, in the name of Martin Kelly, was thereupon ordered to be imprisoned in the house of correction, and kept to hard labour for the term of two years. And so the jurors aforesaid, upon their oath aforesaid, do say that the said William Martin, on the day and year first aforesaid, feloniously and unlawfully had in his custody and possession the said several pieces of false and counterfeit coin, knowing the same to be false and counterfeit, and with intent unlawfully, fraudulently, and deceitfully to utter and put off the same in manner aforesaid, and against the form of the statute in such case made and provided.

possession of counterfeit coin was by the 12th section of the above statute made felony only when there had been a previous conviction of an offence relating to the coin, and no such previous conviction had been proved. I allowed the case to go to the jury upon the question whether the prisoner was guilty or not of the subsequent offence. The jury found a verdict of guilty. The prisoner was then asked whether he had been previously convicted as charged in the indictment, and he admitted that he had been so convicted. Feeling doubtful whether I had done right, first, in refusing to admit the certificate when it was tendered in evidence, and secondly, in leaving to the jury the question of the prisoner's guilt as to the subsequent offence before the previous conviction had been proved, I deferred passing sentence, and the prisoner remains in custody. I desire to have the opinion of the Court for Crown Cases Reserved, whether I was right in rejecting the certificate when it was tendered in evidence, and in submitting to the jury the question whether the prisoner was guilty of the subsequent offence before the previous conviction had been proved against him.

*Forbes* for the prosecution. — This case has been stated for the purpose of ascertaining the correct procedure upon the trial of such indictments as the present. It is submitted that it was necessary that the previous conviction should have been first proved, in order to shew that the subsequent offence was a felony. The prisoner was arraigned and tried as for a felony, and before the jury could find him guilty of a felony, it must have been shewn to them that the facts proved against the prisoner amounted to a felony, which could be done only by shewing that he had been previously convicted of one of the offences designated in the 9th, 10th, or 11th section of the 24 & 25 Vict. c. 99. By the 12th section of that act, it is enacted that "whosoever, having been convicted either before or after the passing of this act, of any such misdemeanour, or crime, and offence, as in any of the last three preceding sections mentioned, or of any felony or high crime and offence against this, or any former act, relating to the coin, shall afterwards com-

mit any of the misdemeanours or crimes and offences in any of the said sections mentioned, shall in England and Ireland be guilty of felony."

By section 37, "the proceedings upon any indictment for committing any offence, after a previous conviction or convictions, shall be as follows: (that is to say), the offender shall, in the first instance, be arraigned upon so much only of the indictment as charges the subsequent offence, and if he plead not guilty, or if the Court order a plea of not guilty to be entered on his behalf, the jury shall be charged in the first instance to inquire concerning such subsequent offence only; and if they find him guilty, or if on arraignment he plead guilty, he shall then, and not before, be asked whether he had been previously convicted as alleged in the indictment, and if he answer that he had been so previously convicted, the Court may proceed to sentence him accordingly; but if he deny that he had been so previously convicted, &c., the jury shall then be charged to inquire concerning such previous conviction or convictions, and in such case it shall not be necessary to swear the jury again, &c."

Learned judges on circuit are reported to have varied in their practice in this matter (2).

[MARTIN, B.—I used to think upon the reading of the indictment, that the previous conviction ought to have been first proved, but on referring to the statute, I thought it clear to the contrary.]

The 37th section might be referred to the 20th and 21st sections of the act, and read with reference to those sections.

No counsel appeared for the prisoner.

*Per Curiam* (3).—The learned Commissioner took the right course. The act is directory and is sufficiently explicit.

*Conviction affirmed.*

Attorney—The Solicitor to the Treasury for the prosecution.

(2) See *The Queen v. Goodwin*, 10 Cox C.C. 534.

(3) *Kelly, C.B., Blackburn, J., Martin, B., Lush J., and Brett, J.*

[IN THE COURT OF QUEEN'S BENCH.]

1870.  
Jan. 16.

THE TRUSTEES OF THE  
BRIGHTON TURNPIKE TRUST  
(appellants) v. THE SUR-  
VEYORS OF THE HIGHWAYS  
OF THE PARISH OF PRESTON  
(respondents).

*Turnpike Road—Repair—Insufficiency of Trust Funds—Contribution from Highway Rates—Apportionment—4 & 5 Vict. c. 59. s. 1.*

By a special Turnpike Roads Act, the trustees were authorised to expend the sum of 850*l.* upon the repair of the 35 miles of road within their trust. This sum was insufficient for the repairs, and they applied to justices to make an order upon the surveyors of highways for the parish of P., through which a portion of the road passed, for the payment of a sum of money towards the repairs of such road. They required an order for the payment of 115*l.* 8*s.* 6*d.*, which sum they arrived at by apportioning the 850*l.* according to a mileage proportion, which would give 27*l.* 4*s.* 8*d.* to P., and then deducting that sum from 142*l.* 13*s.* 2*d.*, the estimated amount necessary for the repair of the road in P. The cost of repairing the road in P. was higher than the cost in other parishes, owing to the traffic being much heavier, and if the apportionment had been made after taking into consideration such additional cost, the sum apportioned to P. would have been 89*l.* :—Held, that the mode of calculation adopted by the trustees was wrong, and that the justices were right in ordering the payment of 53*l.* 13*s.* 2*d.*, the difference between the above sum of 89*l.* and the estimated cost of the repairs for the year in P.

CASE stated by justices under Statute 20 & 21 Vict. c. 43.

1. At a special sessions for highways, held at Hove, in the county of Sussex, on the 1st day of March, 1869, an information by Edward Waugh, clerk to the appellants, was exhibited before the justices under the 4 & 5 Vict. c. 59 (which statute has been continued by several subsequent statutes to the present time), stating that the funds of the Brighton, Cuckfield and West Grinstead Turnpike Trust, applicable under the Brighton, Cuckfield and West Grinstead Turnpike Roads Act,

NEW SERIES, 39.—MAG. CAS.

1854 (the local Act by which the trustees are authorised to levy tolls upon the roads for the repairs and maintaining the same), were insufficient for the repairs of the turnpike road within the parish of Preston; and praying that the justices would proceed to make such judgment and order in the premises, as upon examination to the justices should seem meet, and as to law did appertain.

2. The justices examined into the allegations contained in the information; and it appearing to them that the allegations were true, they did adjudge and order that the respondents should pay to the appellants the sum of 53*l.* out of the highway rates to be levied in the parish of Preston, such sum of 53*l.* to be wholly laid out in the actual repairs of such part of the turnpike road as lies within the parish of Preston.

3. The appellants were dissatisfied with the determination of the justices upon the hearing of the information, as being erroneous in point of law, and having duly applied to them to state and sign a case, setting forth the facts and grounds of their determination, for the opinion of this Court,

The following CASE was stated.

4. Upon the hearing of the information, the following facts were proved or admitted by both parties :—

5. The turnpike trust is regulated by "The Brighton, Cuckfield and West Grinstead Turnpike Roads Act, 1854," which Act is to be taken and considered as part of this case, and is hereinafter referred to as the local Act.

6. Section 25 of the local Act provides for the application of the revenue of the trust in the following order :—

1. In paying the expenses of the Act.

2. In paying the expenses of erecting a new toll-house in lieu of the Preston gate.

3. In paying the expenses of repairing toll-gates, and in salaries and general management, not exceeding in any one year the sum of 174*l.*

4. In paying the expenses (not exceeding the sum of 850*l.* in any one year) of maintaining and keeping in repair the said roads.

F

5. In paying interest at 3l. 10s. per cent. on 2,761l., a portion of the debt due on the roads.

6. In paying interest at the rate as aforesaid on 4,700l., the remainder of the debt.

7 and 8. In reducing the principal of such debt.

9. In paying any further expenses (beyond the sum of 850l.) of maintaining, keeping in repair, and improving the roads, and of putting the Act into execution in reference thereto.

7. There was not any portion of the revenue applicable for the repair of the roads under the 9th clause of the last paragraph.

8. The roads of the trust were of the total length of 35 miles, and the proportion of the turnpike road within the parish of Preston was one mile and thirty-eight poles in length.

9. The sum of 850l. authorised by the local Act to be expended in the repairs of the roads, was at the rate of about 24l. 6s. per mile on the whole length of the roads, and such sum was wholly insufficient for the repairs of the roads. The average cost of the repairs has been the sum of 1,200l. per annum.

10. In no one of the parishes, within which the turnpike road of the trust lies, can it be kept in repair for a sum at the rate of 24l. 6s. per mile.

11. The estimated cost of repairs for the whole of the road, for the year ending 31st of December, 1869, was the sum of 1,350l. 13s., out of which the cost of repairing so much of the turnpike road as lay within the parish of Preston for that year, was the sum of 142l. 13s. 2d.

12. The portion of the turnpike road which lay within the parish of Preston had a large amount of traffic upon it, and was very much used and resorted to by the inhabitants and visitors of Brighton, and cost considerably more to keep in repair than any other portion of the roads.

13. There was no toll-gate in the parish of Preston, and under the local Act the trustees were prohibited from erecting a toll-gate in such parish.

14. The cost of keeping the roads in repair varied considerably in the several

parishes, and the following tabular statement shews the length of the road in each parish, and the estimated cost of repairing the same for one year.

Name of Parish.	Length of Road.			Total cost of Repairs in 1869.		
	M.	F.	P. L.	£	s.	d.
Preston ... ..	1	...	38	142	13	2
Patcham ... ..	2	4	34	172	15	3
Piecombe ... ..	2	2	38	108	11	3
Clayton ... ..	4	5	39 11	202	4	5
Keymer ... ..	1	...	37 12	41	1	0
Cuckfield ... ..	10	2	37 22	328	11	2
Hangham ... ..	3	6	1	99	13	5
Crawley ... ..	...	6	13 2	31	11	11
Ifield ... ..	1	2	8 2	38	14	0
Bolney... ..	2	2	32	59	14	4
Cowfold ... ..	2	3	37 15	70	5	2
West Grinstead ...	1	7	25 0	54	17	11
	34	7	21 39	1350	13	0

15. The appellants as trustees of the roads, at a meeting held for, among other purposes, that of fixing the amount to be contributed towards the repairs of the roads out of the highway rates of the several parishes within which they lie, had considered and decided that the sum of 850l., which by the local Act they are authorised to expend out of the tolls in the repair of the roads, should be credited to the several parishes within which they lie, rateably in proportion to the mileage of road of the trust within each parish; and they consequently applied to the respondents to pay them out of the highway rates for the parish of Preston the difference between the anticipated cost of the actual repairs of such part of the turnpike road as lies within the parish, and the sum (portion of the 850l.) which they had on the above-mentioned mileage principle appropriated to the repairs thereof.

16. The respondents contended that the trustees ought to expend the sum of 850l. in proportion to the actual wear and tear in each parish. There was no evidence to shew whether the sum of 850l., or any part thereof, had been actually expended in proportion to mileage, or in proportion to wear and tear.

17. Under the mileage principle contended for by the appellants, the proportion of the sum of 850l. to be spent in the

parish of Preston was 27*l.* 4*s.* 8*d.*, leaving a sum of 115*l.* 8*s.* 6*d.* to be contributed by the respondents, and this last mentioned sum the appellants applied to the justices to adjudge and order to be paid by the respondents.

18. The justices were of opinion that,—whereas the anticipated cost for the entire year of the repair of all the roads of the trust was 1,350*l.* 13*s.*, of which 850*l.* was the sum to be contributed under the local Act out of the tolls, and the excess 500*l.* 13*s.*, the sum to be contributed under the general Act, out of the highway rates,—it was right that the two sums of 850*l.* and 500*l.* 13*s.* should be apportioned between the several parishes upon one and the same principle, that, namely, of accordance with anticipated cost for the entire year of repair in each parish, and not upon the principle of mere mileage, and as 89*l.* would be the share of the 850*l.*, for which the parish of Preston would be entitled to have credit on this principle, the justices ordered the respondents to pay out of the highway rates of the parish of Preston the sum of 53*l.* 13*s.* 2*d.*, such sum being the difference between 89*l.* and the sum of 142*l.* 13*s.* 2*d.*, the estimated costs for the entire year of the repairs in that parish.

19. The question of law, arising upon the above statements, was, whether, under the circumstances stated, the decision of the justices was correct, or whether the principle contended for by the appellants was correct.

If the Court should be of opinion that the principle contended for by the appellants was the correct one, then the order was to be amended by increasing the sum of 53*l.* 13*s.* 2*d.*, thereby ordered to be paid, to the sum of 115*l.* 8*s.* 6*d.* But if the Court should be of a contrary opinion, then the order was to stand.

*Grantham* for the appellants.—The appellants had a right to call upon the respondents to supply the deficiency between the sum necessary for the repairs, and the sum apportioned to the parish. The whole sum of 850*l.* has been divided according to a mileage proportion, which is the correct mode of apportionment. The trust is now being wound up, and the respondent parish will for the future be compelled to maintain the whole length of

road included within it. The mode adopted is the most simple, and the best.

[*MELLOR, J.*, referred to *The King v. The Justices of Berks* (1).]

*Merrifield* for the respondents.—The justices were right in ordering the payment of the contribution of 53*l.* 13*s.* 2*d.* only, instead of the sum which the appellants asked for. The mode of apportionment adopted by the appellants was unjust. The expense of repairs necessary upon the road in the respondent parish was much greater, as shewn in the Case, than upon the roads in the country parishes where the traffic was light. That being so, it is unjust to apportion the 850*l.* according to a mileage proportion, and then to assess the amount of contribution, according to the expense made necessary by the extra wear and tear in the respondent parish. The fair way is to apportion the 850*l.* according to the respective amount of wear and tear of the roads in the several parishes. The statute 4 & 5 Vict. c. 59. s. 1. gives the justices a wide discretion, and the Court cannot say that they were wrong. [He referred to *The Queen v. South Shields* (2), and *Brown v. Evans* (3).]

*Grantham* replied.

*COCKBURN, C.J.*—I am of opinion that the justices were right, and that our judgment must be for the respondents. The statute in question makes provision for enabling trustees of turnpike roads, where the funds are inadequate to pay for the expenditure necessary in repairing the roads, to apply for an order for a contribution out of the highway rate made for any parish through which the road passes. The section says that the justices may adjudge and order what portion, “if any,” of the rate or assessment shall be paid by the parish surveyor to the trustees.

Starting from that point of view, I come to the conclusion that an apportionment according to the mileage principle is wrong. This is the case of a trust with roads passing through several parishes—one contiguous to Brighton, where the population is large and the traffic heavy, and others

(1) 8 Dowl. 727.

(2) 23 Law J. Rep. (N.S.) M.C. 134; s. c. 3 E. & B. 599.

(3) 34 Law J. Rep. (N.S.) M.C. 101.

being country parishes without any large population. In the former class of parishes, a much larger expenditure would be necessary than in the latter. Now, if the fund which the trustees are authorised to raise and expend was sufficient for the repair of the whole system of roads, it would be expended according to the proportion required for this or that parish. Instead of being sufficient, it proves to be insufficient, and it becomes necessary to apply for a rate in aid. Suppose that for parish A. 100*l.* is required for the maintenance of the roads, while for parish B. 50*l.* would be enough, and a rate in aid is required, the amount which the trustees have in hand ought to be expended in the same proportion as it would have been, if it had been sufficient without calling for any contribution. Justice and equity require that it should be apportioned between the parishes, in proportion to the expenditure required in each, for the repairs of the road in each. The justices were therefore right in saying that the fund received by the trustees ought to be apportioned in the way suggested by them, that being the course which justice and equity required.

MELLOR, J.—I am of the same opinion, and for the same reasons. The division according to the mileage is the more simple, but the more equitable and proper mode of apportionment is according to the expenditure required.

HANNEN, J.—I have had some difficulty during the argument, but upon the whole I agree with the opinion which has been expressed. If it had been intended that the fund should be expended according to the mileage principle, it seems strange that the Legislature should not have said so. As they have not said so, I think that it must have been contemplated that something more was necessary than a mere computation of a mileage proportion. It is proper that the greater expenditure required in the repair of any particular portion of road should be taken into consideration.

*Judgment for the respondent.*

Attorneys—Prior & Bigg, agents for E. Waugh, Cuckfield, for appellants; E. M. Hore, agent for Williams & Greaves, Brighton, for respondents.

[IN THE COURT OF QUEEN'S BENCH.]  
1870. } ALLEN, *appellant*, v. WORTHY,  
Jan. 16. } *respondent*.

*Vaccination—30 & 31 Vict. c. 84. s. 31—Certificate of Medical Practitioner—Omission to procure Vaccination of Child—Second offence.*

On the 30th of March, 1869, A. was convicted for disobeying an order of a justice to cause his child to be vaccinated within seven days from the date of such order. Subsequently the registrar of births and deaths gave him notice to procure the vaccination of the child, which he failed to do; and on the 29th of April, another information came on to be heard against him, when he was ordered to have the child vaccinated within seven days from the date of such order. At the hearing he produced a certificate in the form given in schedule B. to the Act 30 & 31 Vict. c. 84, and signed by a medical practitioner, certifying that the child was not in a fit state to be vaccinated, and postponing the vaccination until the 20th of June. He did not obey the order made upon him, and on the 13th of May, 1869, another information under 30 & 31 Vict. c. 84. s. 31, came on to be heard against him for disobedience of such order. He again produced the certificate above mentioned, but he was convicted:—Held, first, that the justices were not deprived of the jurisdiction to convict him, by reason of the former conviction; and secondly, that the certificate was not a bar to the proceeding, but that the justices had jurisdiction to consider whether it was given *bonâ fide* or not, and that if they thought it was not, they might consider that A. had *shewn* no reasonable ground for his omission to carry the order into effect.

CASE stated by Justices under 20 & 21 Vict. c. 43.

1. On the 8th day of May, 1869, the following information was laid before a justice of the peace for the county of Huntingdon, under the provisions of the 30 & 31 Vict. c. 84, "The Vaccination Act, 1867":—

"Be it remembered that, on the 8th day of May, 1869, at St. Neots, in the said county of Huntingdon, Alfred Worthy, of Eynesbury, in the said county of Hun-

tingdon, registrar of births and deaths, personally cometh before me, the undersigned, one of her Majesty's justices of the peace in and for the said county, and informeth me that Henry James Allen, late of the parish of Eynesbury aforesaid, dissenting minister, within the space of six calendar months last past, to wit, on the 8th day of May, 1869, at the parish of Eynesbury, in the said county of Huntingdon, did disobey a certain order under the hand and seal of Captain William Humbley, one of her Majesty's justices of the peace for the said county of Huntingdon, bearing date the 29th day of April, 1869, whereby the said Henry James Allen was ordered and directed to have Eliza Allen, under the age of fourteen years, and the legitimate child of the said Henry James Allen, vaccinated within seven days from the date of the said order, contrary to the form of the statute in such case made and provided. Wherefore, the said Alfred Worthy prayeth the consideration of me, the said justice, in the premises, and that the said Henry James Allen may be summoned to appear before me and answer the premises, and make his defence thereto.

"Alfred Worthy.

"Exhibited before me, the day and year and at the place first above written.

"W. Humbley."

2. The justice issued his summons to Henry J. Allen to appear at the petty sessions, St. Neots, on the 13th day of May, 1869.

3. At the hearing before the justices who stated this case, it was proved that the following order had been made and served on the appellant:—

"To H. J. Allen, of Eynesbury, in the county of Huntingdon, dissenting minister.

"Whereas, by an information taken before the undersigned, Captain William Humbley, one of her Majesty's justices of the peace in and for the said county, on the 22nd day of April now instant, Alfred Worthy, of Eynesbury, in the county of Huntingdon, registrar of births and deaths for the district of the St. Neots Union, comprising the said parish of Eynesbury, informed me, the said justice, that Eliza Allen, under the age of fourteen years, the legitimate child of you, the said H. J.

Allen, had not been successfully vaccinated, notwithstanding that he, the said Alfred Worthy, had given notice to you, the said H. J. Allen, to procure such child to be vaccinated, contrary to the form of the statute in such case made and provided. Whereupon I, the said justice, issued my summons to you, the said H. J. Allen, directing you to appear with the said child before me, the said justice, or some other justice of the peace for the said county, on the 29th day of April instant, to shew cause why such child had not been vaccinated. And whereas you, the said H. J. Allen, have this day appeared before me, the said justice, and it being now made to appear to me, on oath, that the said Eliza Allen is under the age of fourteen years, and has not been vaccinated, and has not had the small-pox, and you, the said H. J. Allen, having failed to shew any reason why the said Eliza Allen should not be vaccinated: Now I, the undersigned, do hereby order and direct you, the said H. J. Allen, to have the said Eliza Allen vaccinated within seven days from the date of this order.

"Given under my hand and seal, this 29th day of April, 1869, at St. Neots, in the county aforesaid.

"W. Humbley (L.s.)"

4. It was proved that the appellant had neglected to obey the order, and it was admitted that the child had not, at the time of the hearing, been vaccinated.

5. The appellant stated, and the fact was admitted by the respondent, that the appellant had previously, on the 30th of March, 1869, been convicted of disobeying an order dated the 11th of March, 1869, under the hand and seal of a justice of the county, whereby the appellant had been ordered to cause Eliza Allen to be vaccinated within seven days from the date of such last-mentioned order.

6. It was therefore contended on behalf of the appellant, that the information now laid against him was for the same offence, and that therefore the appellant could not be again convicted, and stress was laid on the concluding words of the Lord Chief Justice Cockburn, in the judgment pronounced in *Filcher v. Stafford* (1).

(1) 33 Law J. Rep. (N.S.) M.C. 113.

7. We however considered that the jurisdiction of justices, under s. 31 of the Vaccination Act of 1867, was not limited to making but one order, directing a child under 14 years to be vaccinated, and that the neglect to obey such order formed a separate offence punishable on conviction, and that the conviction for disobeying a previous order was no previous conviction of the offence charged in the information before us, and that consequently the case was in no way governed by the decision in *Pilcher v. Stafford*, and that s. 31 of the Vaccination Act, 1867, appeared to us to have been inserted in such Act, with the object of avoiding the mischief found to exist when *Pilcher v. Stafford* was decided.

8. The appellant then contended that Eliza Allen was then, and, since the 30th of April then last past, had been in an unfit state for vaccination, and in support of this contention, produced a certificate of which the following is a copy:—

[Form B.] “The Vaccination Act of 1867 (30 & 31 Vict. c. 84).

“Medical Certificate of unfitness for successful vaccination. [To be delivered (pursuant to s. 18) to the father or mother of an unvaccinated child, or to the person having the custody of such child.]

“I the undersigned hereby certify that I am of opinion that Eliza Allen, the child of H. J. Allen, of Eynesbury, in the parish of Eynesbury, in the county or borough of Hunts, aged 12, is not now in a fit and proper state to be successfully vaccinated. I do here postpone the vaccination until the 20th of June, dated this 20th of April, 1869.”

W. J. Collins, M.D., &c.

“1 Albert Terrace, Regent's Park.”

And it was contended, on behalf of the appellant, that the justices were bound by the terms of the Vaccination Act of 1867, to accept such certificate as proof that the child was then unfit to be vaccinated, and that the production of such certificate was reasonable ground for the omission of the appellant to carry the order of the 29th of April, 1869, into effect.

9. “We drew attention to the fact that such certificate was dated prior to the date of the order of the 29th of April, 1869,

and it was admitted that the same certificate had been produced when such last-mentioned order was made, but the justice making such order had refused to attach any weight to such certificate, on the ground that the practitioner by whom such certificate purported to have been signed was opposed to the operation of vaccination generally, as had been stated by the appellant on a previous occasion, and such practitioner has signed a certificate under the Vaccination Act of 1867, and which had been on such previous occasion produced in Court, stating that Eliza Allen ought never to be vaccinated; that the reproduction of such certificate of the 20th of April, 1869, which had been refused by the justice making the order of the 29th of April, 1869, formed, under such circumstances, no reasonable ground for the omission of the appellant to carry into effect such order, and we therefore convicted the appellant, and adjudged him to pay a penalty or sum of 7s., and the sum of 3s. for costs, such sums to be respectively levied by distress, and in default of sufficient distress, we adjudged the appellant to be committed to the common gaol at Great Stukeley, in the county of Huntingdon, for a period of 14 days.”

The questions for the opinion of the Court were: First, Whether the conviction of the appellant on the 30th of March, 1869, was a sufficient defence to the information of the 8th of May, 1869. Second, Whether the production of the medical certificate set out in the case was a sufficient answer to the information of the 8th of May, 1869.

*Graham*, for the appellant.—The first question is whether the justices had jurisdiction to enforce the penalty under the 31st section of 30 & 31 Vict. c. 84, the appellant having been already convicted for discharging the order made upon the 30th of March (2).

(2) The 30 & 31 Vict. c. 84. s. 18. enacts, “If any public vaccinator or medical practitioner shall be of opinion that the child is not in a fit and proper state to be successfully vaccinated, he shall forthwith deliver to the parent or other person having the custody of such child, a certificate under his hand according to the Form in the schedule hereto



This point is settled in the appellant's favour by *Pilcher v. Stafford* (1). It was there held, under 16 & 17 Vict. c. 100, that a parent having been fined for ne-

annexed marked B, or to the like effect, that the child is then in a state unfit for successful vaccination, which certificate shall remain in force for two months, and shall be renewable for successive periods of two months until a public vaccinator or medical practitioner shall deem the child to be in a fit state for successful vaccination, when the child shall, with all reasonable despatch, be vaccinated, and the certificate of successful vaccination duly given if warranted by the result."

Section 29. "Every parent or person having the custody of a child, who shall neglect to take such child, or to cause it to be taken to be vaccinated, or, after vaccination, to be inspected, according to the provisions of this Act, and shall not render a reasonable excuse for his neglect, shall be guilty of an offence, and be liable to be proceeded against summarily, and upon conviction to pay a penalty not exceeding twenty shillings."

Section 31. "If any registrar, or any officer appointed by the guardians to enforce the provisions of this Act, shall give information in writing to a justice of the peace that he has reason to believe, that any child under the age of 14 years, being within the union or parish for which the informant acts, has not been successfully vaccinated, and that he has given notice to the parent or person having the custody of such child to procure its being vaccinated, and that this notice has been disregarded, the justice may summon such parent or person to appear with the child before him at a certain time and place, and upon the appearance, if the justice shall find, after such examination as he shall deem necessary, that the child has not been vaccinated, nor has already had the small-pox, he may, if he see fit, make an order under his hand and seal, directing such child to be vaccinated within a certain time; and if, at the expiration of such time, the child shall not have been so vaccinated, or shall not be shewn to be then unfit to be vaccinated, or to be insusceptible of vaccination, the person upon whom such order shall have been made shall be proceeded against summarily; and, unless he can shew some reasonable ground for his omission to carry the order into effect, shall be liable to a penalty not exceeding twenty shillings. Provided that if the justice shall be of opinion that the person is improperly brought before him, and shall refuse to make any order for the vaccination of the child, he may order the informant to pay to such person, such sum of money as he shall consider to be a fair compensation for his expenses and loss of time in attending before the justice."

Section 34. "In any prosecution for neglect to procure the vaccination of a child, it shall not be necessary in support thereof, to prove that the defendant had received notice from the registrar or any other officer, of the requirements of the law in this respect; but if the defendant produce any such

neglecting to have his child vaccinated, no further proceeding could be taken against him. There is no material difference between the two statutes in respect of this matter, and the proceeding now in question is substantially a proceeding for neglecting to have the child vaccinated. In that case, Cockburn, C.J., after saying that the Act did not enact a remedy, continued as follows: "If we were to hold otherwise on the present enactments, it would follow that for every day during which the omission to vaccinate a child continues, a penalty would be incurred, so that the penalties might accumulate to a very serious amount, which could never have been the intention of the legislature." So, under the statute now in question, there is nothing to shew that a person may be fined *toties quoties*. If it had been so intended, the legislature would have said so, having in view the decision in *Pilcher v. Stafford* (1). Nor is there anything to shew that the registrar can give the notice provided for by the 15th section more than once, so as to make the parent repeatedly liable to the penalty. That notice is to be given for the benefit and protection of the parent, not to authorise the imposition of repeated penalties.

The second point raises the question whether the production of the certificate in the form furnished by 16 & 17 Vict. c. 100, schedule B (3) did not constitute a defence to the proceeding against the appellant. The justices were wrong in their decision upon this point. Even if

certificate as herein-before described, or the register of vaccinations kept by the registrar as herein-before provided, in which the certificate of successful vaccination of such child shall be duly entered, the same shall be a sufficient defence for him, except in regard to the certificate marked B, when the time specified therein for the postponement of the vaccination shall have expired before the time when the information shall have been laid."

(3) It was observed by Hannen, J., that although the 16 & 17 Vict. c. 100 is repealed by 30 & 31 Vict. c. 84, there is no schedule printed with that statute in the edition of the Statutes used in the Court. It will, however, be found to be properly inserted in the edition of the statutes published with the *Law Journal Reports*, and also in that published by the *Law Reports*.

they had a discretion, under the concluding words of the 31st section, to hold that the appellant did not shew any reasonable ground for his omission to carry the order into effect, they seem to have so held in this case, simply because the justice who made the order of the 29th of April, thought that the practitioner, who gave the certificate, objected to vaccination altogether. But the production of the certificate was a defence under section 34, a defence not to be confounded with the reasonable ground for the omission referred to in section 31. But, further, the intention was, that the medical practitioner, and not the justice, should decide whether the child was in a fit and proper state to be successfully vaccinated.

[MELLOR, J.—This order is made upon the appellant in consequence of his disobedience of the former order, and was not a prosecution for neglect to procure the vaccination of the child within s. 34.]

The *Solicitor General*, Sir J. D. Coleridge (*Archibald* with him), for the respondent. The decision in *Pilcher v. Stafford* (1) was quite right, and need not be disputed in the present case. It was given under 16 & 17 Vict. c. 100, which was repealed by the statute now in question. This later act, in the earlier sections, gives a similar mode of proceeding, but by the 31st section gives additional machinery and additional powers for the very purpose of enabling measures to be taken more effectual than those which, under 16 & 17 Vict. c. 190, had been found defective in attaining the salutary objective view. It being found that the appellant refused to have the child vaccinated, proceedings were taken against him anew for disobedience of the order, and the justices had power, under section 31, to make the order now appealed against, as the appellant persisted in neglecting to have the child vaccinated. It is clear that the justices are not prevented from hearing a fresh application when the former order is disobeyed, for by section 31, if the order has been obeyed, but the vaccination has not been successful, they may summon the parent to appear before them, and may make an order if they see fit. So long as the child is under the age of 14 years,

this proceeding may be taken as often as may be necessary.

[MELLOR, J.—The policy of the legislature was to insure the vaccination being successful.]

Then the question arises whether the certificate was a bar to the proceeding. It is submitted that it was not. The justices say in the case, "We drew attention to the fact that such certificate was dated on a day prior to the date of the order of the 29th of April, 1869, and it was admitted that the same certificate was produced when such last-mentioned order was made, and it appears that the justice who made the order refused to attach any merit to the certificate, because the practitioner who signed it was opposed to the operation of vaccination generally, as had been stated by the appellant on a previous occasion."

[COCKBURN, C.J.—The language of the certificate is ambiguous; it may mean that there was something peculiar about this child, or it may mean that, in common with all children, it was not a fit subject for vaccination.]

Under 16 & 17 Vict. c. 100. s. 5, the certificate was conclusive for two months, but under section 31 of 30 & 31 Vict. c. 84, the justices are to decide whether any reasonable ground can be shewn for the omission to carry the order into effect. The case shews that they did so consider, and they decide that no such reasonable ground was shewn. It cannot be that a medical practitioner, by giving such a certificate *malâ fide*, can altogether free the parent from the obligation cast upon him.

[COCKBURN, C.J.—It is evidence upon which the justice may act if he sees fit.]

*Graham* in reply.—If the certificate is given *malâ fide*, the proper remedy is by proceeding, under section 30, against the medical practitioner for misdemeanour. He is the judge to decide whether the child is a fit subject for vaccination or not; section 34 overrides section 31, and makes the certificate a sufficient defence. But even if the justices were entitled to consider whether it was honestly given or not, there is nothing whatever to shew *malâ fides*.

COCKBURN, C.J.—After the full discussion which we have had of the several provisions of these statutes, I think that we must decide that the justices were right in convicting the appellant.

It is quite clear that it was intended by the 31st section of 30 & 31 Vict. c. 84 to give additional powers to the officers appointed for the purpose of insuring and enforcing the operation of vaccination. This Act, however, does not repeal or suspend the machinery founded by the previous statute 16 & 17 Vict. c. 100. By the earlier sections it re-enacts what had been provided for by that Act. By section 15, the registrar is to give notice of vaccination to the parents, or other persons registering births. By section 16, those persons are to procure the vaccination of children within three months. The 29th section makes it an offence to neglect to procure the vaccination of the child. There is, however, an enactment relating to the voluntary procuring of vaccination by the parents without the intervention of magisterial authority. This is a provision that if the public vaccinator or a medical practitioner shall be of opinion that the child is not in a fit and proper state to be successfully vaccinated, he shall give a certificate to that effect, which shall remain in force for two months, and may be renewed from time to time. If no such certificate be given, or if the time has expired and the child has not been vaccinated, an offence within section 29 is committed. But all that has nothing to do with any magisterial intervention, according to the construction which was put upon the former statute in *Pulcher v. Stafford* (1), and which was a perfectly correct decision; it was there held that when the offence was once completed, and the offender had been convicted and punished by the infliction of a penalty, there was no provision in the statute whereby a fresh offence was created with a liability to a fresh penalty. But here the question is whether the new machinery introduced by section 31 has not made a difference. It is clear that if the 31st section had not been introduced, the decision in *Pulcher v. Stafford* (1) would have applied; but I think that that section makes all the difference as regards what may now be done with respect to a second

offence and a second penalty. The 31st section provides that if any child, under the age of 14 years, has not been successfully vaccinated (which includes the not having been vaccinated at all), notice may be given by the registrar to the parents to have the child vaccinated, and in the event of that notice not being complied with, information may be given to the justice, who may enquire into the matter, and if he is satisfied that the child has not been vaccinated, and has not had the small-pox, he may order that the child shall be vaccinated within a certain time. If this order is not obeyed, the section creates an offence; namely, the offence of not having complied with the order. Now, in this case, the appellant received notice that he must procure the vaccination of the child. The justice made an order, and it was not complied with. An information was then laid against the appellant, he was convicted, and a penalty was imposed. Nevertheless, the order was not complied with, and it became necessary to renew the proceedings under the 31st section. A fresh notice was given, the matter was again brought before the justice, and a fresh order was made, which also was disobeyed; and now the appellant has been convicted of disobeying that order under the provisions contained in section 31. It is said that the power of the registrar to give such an order under section 31 is gone as soon as he has once given such an order, and that a person cannot be convicted *toties quoties*, as often as occasion shall arise when he has disobeyed successive orders. At first, I was inclined to think that there was some reason for that contention, and still I think that the intention is not so clearly expressed as it might have been, but the Solicitor-General has satisfied me that it is competent for the registrar to repeat his notice, and therefore that it is competent for the justice to make his order *toties quoties*, so often as a fresh notice is given, and so long as the child remains unvaccinated. The language is general, and when we look at the intention of the legislature, we are bound to put a reasonable construction upon the language of the statute. It was intended to effect a great public good by caring for

the health of persons, and especially for the health of children who are not able to help themselves. It is not necessary here to discuss whether vaccination is a blessing or not; the legislature has thought it a matter of great public importance, and therefore the statute has been passed, and is to be enforced. • I think, therefore, that the power given by section 31 is not confined to one notice, one order, and one conviction, but that the whole proceeding may be instituted *toties quoties*, so long as the disobedience continues.

But then it is said that the certificate which has been given and produced was an answer to the proceedings, and the question is whether that is so with regard to proceedings taken under section 31. I think that it is not. I think that the effect given by the statute to the certificate has no reference to such proceedings. It is to be observed that the giving of the certificate is provided for by section 19, which follows immediately after the legislation which provides for what is to be done by parents within three months after the birth of the child, and *prima facie*, I think that it must be taken to be confined to these proceedings, and not to such as are instituted under section 31. And there is an obvious distinction; the earlier sections have reference to what a parent is to do upon notice being given of what the statute requires. If he fails to fulfil the requirements of the statute, then he is punishable under section 29. Under that section it may well be said that it would be a sufficient answer to say, "I have a certificate that the child is not in a fit and proper state to be successfully vaccinated," because in such a case there has been no intervention of a magisterial tribunal establishing that the child is in a fit state to be vaccinated. But it is a different thing when you come to the 31st section, where notice having been given by the registrar, the matter is brought before the justice, who, only after making full inquiry, is competent to make the order. It would then be fit that the certificate should be carefully considered, but not to the extent of taking away from him the judicial discretion which it would be his duty, in the exercise of his functions, to bestow upon the case.

I think it plain, when I look at the 31st section, that it was never intended that such a certificate should have the effect of ousting the exercise of the independent discretion of the justices, as judges, to determine whether the order should be made or not. The section does not refer to the certificate. There is a total silence as to the certificate. [His Lordship read the section.] The person is to be proceeded against for disobedience of the order, unless he can shew some reasonable ground, &c. Of the reasonableness of the ground shewn the justice is to be the judge. But then Mr. Graham says that we must look at section 34, which provides that the certificate shall be a sufficient defence. [His Lordship read the section.] But that has no reference to section 31. If it had not reference to evidence it would have been introduced after the earlier sections, to which I have before referred. It is to be a defence in a "prosecution for neglect to procure the vaccination of a child," thus applying not to section 31, where the proceeding is for disobedience of the order, but to the prosecution under the earlier sections. The same 34th section also provides that it shall not be necessary to prove that the defendant had received notice—of what? Why, notice of the requirements of the law in respect of the vaccination of the child, thus referring again to the earlier sections. It was, therefore, for the justices to consider whether the order had been disobeyed, and whether the penalty should be enforced. They would have to consider the effect of the certificate, and if they were satisfied that it was not *bona fide* made, or not one on which they ought to act, it would be perfectly competent for them to convict the appellant. It is not our office to decide whether or not they were hasty in arriving at the conclusion at which they did arrive. The certificate ought to be taken into consideration with the other circumstances of the case, but it is enough for us to say that it is not an answer to the charge against the appellant so as to deprive the justices of the power to convict him.

MELLOR, J.—The decision in *Pilcher v. Stafford* (1) was a right decision as the law then stood. But alterations are made

by the late statutes, and the manifest duty of the Court is to uphold the obvious policy of the legislature as far as the language of the statute enables us so to do, without straining expressions or interpolating words. It appears to me that the 34th section applies only to such cases as come within the 15th, 16th and 29th sections, and I think that it might more consistently have been inserted immediately after the 29th section. We must read it as if it stood in that place. Then what is the effect of the statute? The 15th, 16th and 29th sections apply to the vaccination of children of tender years, and the three forms of certificates given in the schedules apply to proceedings under those sections, but have no application to a proceeding under section 31 for disobedience of the order. The policy of the legislature was that the power of the justices should be extended so as to enable them to deal with the cases of children up to the age of 14 years. That is the limit as far as age is concerned, and I think that the legislature intended that, within such limit, there should not be any absolute bar to the power of the justices to compel the vaccination of the child. Whether the justices in this case exercised a wise discretion or not, is not for us to say, but I am of opinion that so long as vaccination has not been successfully performed upon a child, so long is the parent or the person having the custody of the child liable to be proceeded against under this Act, in order to compel the vaccination, until the child has attained the age of 14 years. The justices were therefore right, and our judgment must be for the respondent.

HANNEN, J.—I am of the same opinion, and have nothing to add.

*Judgment for the respondent.*

Attorneys—Thomas & Holland, agents for Conquest & Stimson, Bedford, for appellant; the Solicitor to the Treasury, for respondent.

[IN THE COURT OF QUEEN'S BENCH.]

1870. } THOMAS, appellant, v. ALSOP, re-  
Jan. 19. } spondent.

*Order of Maintenance—Wife chargeable to Union without her Husband—Wife leaving Husband through his misconduct—Offer of Husband to receive back Wife.*

By the Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 33, when a married woman requires relief without her husband, the guardians of the union or parish, or the overseers of the parish, as the case may be, to which she becomes chargeable, may apply to the justices having jurisdiction in such union or parish in petty sessions assembled, and thereupon such justices may summon such husband to appear before them, to shew cause why an order should not be made upon him to maintain his wife; and upon his appearance, or in the event of his not appearing, upon proof of due service of such summons upon him, such justices may, after hearing such wife upon oath, or receiving such other evidence as they may deem sufficient, make an order upon him to pay such sum weekly or otherwise, towards the cost of the relief of the wife, as after consideration of all the circumstances of the case shall appear to them to be proper, &c. A husband having been summoned before justices under this section, it appeared that his wife had, about sixteen years previously, left his house, owing to his ill-usage, and had ever since lived separate from him. At the hearing of the summons she was still suffering from injury which she had received from him before their separation. He now offered to receive back his wife and promised not to ill use her, but she refused to go back, and there was medical evidence to shew that it would be dangerous for her to return to cohabitation:—Held, that the justices had jurisdiction, notwithstanding the husband's offer, to make an order, under the above section, upon him for the maintenance of his wife.

CASE stated by Justices under 20 & 21 Vict. c. 43.

At a petty sessions for the division of Teignbridge, in Devon, on July 27th, 1869, an information and complaint preferred by John Alsop, of Newton Abbot,

clerk to the Board of Guardians of the Newton Abbot Union (the respondent), against James Thomas, of Newton Abbot, watchmaker (the appellant), under the 33rd section of the Act 31 & 32 Vict. c. 122 (1),—setting forth that the respondent, at a petty sessions held at the Town Hall, Newton Abbot, on July 23rd, 1869, made an information and complaint, that on July 6th then last past, Thirza Thomas, late of Ashburton, in the said county, but then of the parish of Wolborough in Devon, the lawful wife of the appellant, being a married woman and requiring relief without her husband, had become chargeable to the Newton Abbot Union, and was then chargeable thereto, and that the board of guardians of the union had instructed the complainant (the respondent) to apply that the appellant might be summoned to shew cause why an order should not be made on him to maintain his wife,—was heard and determined by the Justices; and the appellant was ordered to pay to one of the relieving officers of the union every week, from the 27th day of July, 1869, the sum of seven shillings for and towards the relief and maintenance of his wife, for and during so long a time

(1) By 31 & 32 Vict. c. 122. "An Act to make further Amendments in the Laws for the Relief of the Poor in England and Wales," s. 33, when a married woman requires relief without her husband, the guardians of the union or parish, or the overseers of the parish, as the case may be, to which she becomes chargeable, may apply to the justices having jurisdiction in such union or parish in petty sessions assembled, and thereupon such justices may summon such husband to appear before them to shew cause why an order should not be made upon him to maintain his wife; and upon his appearance, or in the event of his not appearing, upon proof of due service of such summons upon him, such justices may, upon hearing such wife upon oath, or receiving such other evidence as they may deem sufficient, make an order upon him to pay such sum, weekly or otherwise, towards the cost of the relief of the wife, as, after consideration of all the circumstances of the case, shall appear to them to be proper, and shall determine in such order, how and to whom the payments shall from time to time be made; which order shall, if the payments required by it to be made be in arrear, be enforced in the manner prescribed by the act 11 & 12 Vict. c. 43, for the enforcing of orders of justices requiring the payment of a sum of money. Provided that such orders may be at any future time revoked by the justices in petty sessions assembled, if they see sufficient cause for so doing.

as she should require relief, or until the order should be revoked.

It was proved on the part of the respondent, and found as a fact, that Thirza Thomas was the lawful wife of the appellant, and was duly married at the parish church of St. Olave, in the city of Exeter, and in the county of the same city, on the 7th of August, 1835, as appeared by the certificate produced. That she lived with the appellant from the date of her marriage up to the 17th of March, 1853, when, in consequence of the ill usage she received from him, she left his house and lived separate from him; and that she was then, at the time of hearing the information, suffering from the injury she had received from him prior to her separation. That she was suffering from uterine disease, from which she had suffered for sixteen years, and that after such a long continuance it was now incurable.

That the appellant had not contributed to the support of his wife during the separation, but had applied to his wife to return to cohabitation. That since the separation she had exhausted what little means she had, and had been supported by the bounty of her friends; that her health was bad, her sight not good, and that she was now wholly unable to maintain herself, and that she required relief.

That whilst residing in the parish of Ashburton, within the Newton Abbot Union, she became chargeable to the common fund of the union, on the 6th of July, 1869, and was then at the time of hearing the information and complaint an inmate of the Newton Abbot Union House, and still chargeable thereto.

That the appellant, at the hearing of the case, through his attorney, offered to receive back his wife at his (appellant's) house and provide for her. That she declined to return to the appellant, from the brutality she had previously received from him, and medical evidence was called, and it was proved to the satisfaction of the justices that it would be injurious to her health to return to cohabitation with him.

It was contended on the part of the appellant, that inasmuch as his wife had, in the presence of the Court, refused to

return back to cohabitation with him, who then again offered her a home and made promise not to ill-use her, that the justices had no jurisdiction, and were debarred from making any order on the appellant after such refusal; and the appellant relied on the case, *Flannagan v. The Overseers of Bishopwearmouth* (2), an appeal on a case stated by justices on 5th George 4. c. 83. s. 3 (the Vagrant Act), in support of his argument, and argued that by such refusal to return, the wife had no further claim on the appellant, and no payment could be required of him after such declaration on her part.

The justices, however, were of opinion that the 33rd section of 31 & 32 Vict. c. 122. was not affected by that decision, but provided expressly for cases to which this decision would have previously been applicable, and that consequently they had power to make an order on the appellant under the 33rd section of 31 & 32 Vict. c. 122.

The question of law arising on the above statements for the opinion of this Court therefore is—Whether the justices had jurisdiction to make such an order after the appellant had offered to receive and provide for his wife in manner before stated.

If the Court should be of opinion that the order was legally and properly made, and the appellant is liable as aforesaid, then the order is to stand. But if the Court should be of opinion otherwise, then the information and complaint is to be dismissed, and the Court is hereby solicited, according to 20 & 21 Vict. c. 43, to remit the case to the justices with the opinion of the Court thereon.

*McKellar*, for the appellant.—The justices had no jurisdiction to make the order in question. No proof was given that the wife required relief within the meaning of the Act. The husband offered to do everything in his power for her support. He proposed to take her back to his house, and promised to treat her with kindness. All that can be said is that he has not provided her with a separate maintenance, but this is no ground for making

him liable to the provisions of a penal statute. In *Flannagan v. The Overseers of Bishopwearmouth* (2), the appellant was summoned under The Vagrant Act, 5 Geo. 4. c. 83. s. 3 (3), upon the charge of wilfully refusing or neglecting to maintain his wife. At the hearing of the summons he offered to maintain his wife if she would come and live with him, but this she refused to do, alleging that he had assaulted her and illused her, and that she was afraid to live with him. The magistrates, being satisfied that the appellant had been guilty of ill-usage, convicted him under the section, though he offered to maintain his wife in future, and to treat her with kindness. But the Court of Queen's Bench quashed the conviction, and Lord Campbell said, "Here the justices seem to have supposed that because the wife might have good ground for refusing to return and live with her husband, that rendered him liable to the offence of wilfully refusing to maintain her under the Vagrant Act. As the law stood, although her apprehensions were well founded, it could not be said that there had been any wilful refusal of the husband to maintain his wife, and the conviction therefore must be quashed." And Wightman, J., adds: "This is an attempt, it would seem, to enforce a separate maintenance in a case where a husband has refused to make his wife a separate allowance." In the present case, a similar attempt was made to enforce a judicial separation before two justices at petty sessions, when the proper course was for the wife to apply to the Divorce Court for relief. In *Cargill v. Cargill* (4), it was intimated that the offer of a husband, who has deserted his wife, to take her and to provide for her, will take away her right to an order for the

(3) Which enacts that every person, being able wholly or in part to maintain himself or herself, or his or her family, by work or by other means, and wilfully refusing or neglecting so to do, by which refusal or neglect he or she or any of his or her family whom he or she may be legally bound to maintain, shall have become chargeable to any parish, township, or place, &c., shall be deemed an idle and disorderly person, within the true intent and meaning of the Act, and may be committed to hard labour for any term not exceeding one calendar month.

(4) 27 Law J. Rep. (N.S.) Prob. & M. 69.

(2) 8 E. & B. 451; s. c. 27 Law J. Rep. (N.S.) M.C. 46.

protection of her property under 20 & 21 Vict. c. 85. s. 21. as there can be no desertion except where the wife is left without provision.

[MELLOR, J.—The process under the present Act is more like the recovery of a debt than that of a penalty, nothing is said about the desertion of the wife. COCKBURN, C.J.—If the circumstances were such as to enable the wife to pledge her husband's credit, she was entitled to relief within the meaning of the Act.]

The wife did not require relief apart from her husband, so as to become legally chargeable to the union. The relief which she claimed was relief which the husband was willing to give.

[LUSH, J.—The relief was offered upon terms which the wife was not bound to accept. It was a question for the justices whether the husband had or had not altered his conduct.]

The wife has not become chargeable as a direct consequence of the husband's conduct. He cited *Burn's Justice of the Peace*, 29th edition, Vol. IV. 299; *The King v. Flintan* (5), *Sweeney v. Spooner* (6).

*Bere*, for the respondent, was not called upon to argue.

COCKBURN, C.J.—I think that we need not call on the counsel for the respondent, and that our judgment must be in approval of what the justices have done. The Act of Parliament, which we are called upon to consider, differs most essentially from the Vagrant Act, 5 Geo. 4. c. 83, upon which the case of *Flannagan v. The Overseers of the Poor of Bishopwearmouth* (2), was decided. By the Act of 5 Geo. 4. a man was made punishable who wilfully refused or neglected to maintain his wife. This is a different case. Here by 31 & 32 Vict. c. 122. s. 33, when a married woman requires relief without her husband the guardians of the union or parish, or the overseers of the parish, as the case may be, to which she becomes chargeable, may apply to the justices having jurisdiction in such union or parish in petty sessions; who may summon the husband before them to shew

cause why he should not maintain his wife, and after hearing the wife and receiving such other evidence as they may deem sufficient, may make an order upon him for the payment of such weekly sum for the support of his wife as they may think proper under the circumstances of the case. Now it is quite clear that this is an enactment altogether different in scope and effect from the former one, and the only difficulty arises upon the particular state of facts to which this enactment is to be applied. It appears that the wife, some years ago, left her husband's house in consequence of his violence, and no one contends that where a wife is subject to personal ill-treatment, she is not justified in leaving her husband's house, and in refusing to return to it, unless she thinks that his temper has changed, and that it is safe for her to return. In this case the wife having left the husband seeks and is entitled to relief from the union, and the husband being summoned to shew cause why an order should not be made upon him for the maintenance of his wife, says, as a reason why it should not be made, that he is ready and willing to maintain her when she returns to him. Now the magistrates do not ask us to decide whether the wife was right in leaving her husband, or in refusing to return to him, they only ask whether the offer to take her back ousts them of their jurisdiction. I am of opinion that it does not. It is for the magistrates to determine whether the wife is bound to return to her husband. If the wife is driven to leave her husband, he is bound to maintain her, not in the conjugal home, but while living apart from him, and if he refuses to do so, she is justified in pledging his credit for necessaries. I think that it is quite clear that, under the circumstances before us, she did require relief within the meaning of the Act. The magistrates have found as a fact that she did, and sitting in their place I should have come to the same conclusion. It is, however, only necessary for us to say that their jurisdiction was not ousted, and I think that there can be no doubt about our decision. The consequences of holding otherwise would be a most serious evil, for the wife would be

(5) 1 B. & Ad. 227.

(6) 32 Law J. Rep. (N.S.) M.C. 82.



obliged either to go back to her husband and submit to his ill-treatment, or get no relief at all. The order of the justices must be confirmed.

MELLOR, J.—I also think that the magistrates had jurisdiction. Some of the facts are such as would make it necessary that I should have a little more explanation before I was quite satisfied as to the merits of the case. But the magistrates have relieved us from any difficulty. They seem to have thought and to have found that the wife was under a reasonable apprehension of violence from her husband, and that she was not bound to return to him. The case to which we have been referred was decided upon the construction of the Vagrant Act, a statute which makes it a criminal offence for a man to wilfully neglect or refuse to maintain his wife. The Court, in giving judgment, seem to have used stronger language than was absolutely necessary for the decision of that case. For it is quite clear that if the wife must return to her husband or be disqualified from obtaining relief, she is in danger of being starved. And I cannot help thinking that the later Act was intended to give an additional jurisdiction to the justices, in order to enable them if necessary to compel a husband to provide his wife with necessities, and that this jurisdiction is not affected by cases upon the Vagrant Act.

LUSH, J.—I entirely agree with the rest of the Court in holding that the magistrates had jurisdiction, and that the case of *Flannagan v. The Overseers of Bishopwearmouth* (2) is distinguishable on the grounds stated by the Lord Chief Justice. The statute now under consideration is framed differently from the Vagrant Act, and was passed for a different purpose. I understand the magistrates to have come to the conclusion that this woman was some years ago driven from her home by her husband's violence, and that although he now offers to take her back, she refuses the offer, on a well founded apprehension of future violence. This being so, and the wife having no means of supporting herself so as to escape from her husband's violence, she becomes chargeable on the union, and the magistrates in making the order for the payment by

the husband of a specific sum, were providing for the very case for which the statute was passed.

*Judgment for the respondent.*

Attorneys—Vizard, Crowder, & Co., agents for E. Square, Plymouth, for appellant; Church, Sons, & Clarke, agents for Francis & Baker, Newton Abbot, for respondent.

[CROWN CASE RESERVED.]

1870. } REGINA v. FALKINGHAM AND  
Jan. 22. } FALKINGHAM.\*

*Children—Abandonment and exposure—  
Life endangered—24 & 25 Vict. c. 100. s. 27.*

The prisoners were convicted on an indictment which charged that they did abandon and expose a child, under the age of two years, whereby the life of the child was endangered. The indictment was framed on the 24 & 25 Vict. c. 100. s. 27. One of the prisoners was the mother of the child, which was illegitimate, and both the prisoners put the child in a hamper at S., wrapped up in a shawl, and packed with shavings and cotton wool, and the mother took the hamper to the booking office of the railway station at M., and left it, having paid the carriage of it to G. The hamper was addressed to the lodgings of the father of the child at G. She told the clerk at the office to be very careful of it, and to send it by the next train, which was due in ten minutes from that time. Upon the address were the words written "With care; to be delivered immediately." The hamper was carried by the passenger train, and was delivered at its address in a little less than an hour from leaving M. On its being opened the child was found alive. The child was taken by the relieving officer the same evening to the union workhouse, where it lived for three weeks afterwards, when it died from causes not attributable to the conduct of the prisoners, or either of them. It was proved to have been a delicate child:—Held,

\* Coram Cockburn, C.J., Kelly, C.B., Bovill, C.J., Martin, B., Willes, J., Channell, B., Byles, J., Blackburn, J., Keating, J., Mellor, J., Pigott, B., Lush, J., Hannen, J., Brett, J., and Cleasby, B.

*by a majority of the Judges, that the conviction was right.*

CASE reserved by the Chairman of the Quarter Sessions for the North Riding of Yorkshire.

The prisoners were indicted (1) at the Michaelmas Quarter Sessions of the Peace of the North Riding of Yorkshire for a misdemeanour, under the 24 & 25 Vict. c. 100. s. 27.

The prisoner Mary Falkingham was the mother of the child, which was about five weeks old at the time mentioned in the indictment; at which time both prisoners were residing together at Stockton-on-Tees.

It was proved that the prisoner Mary Falkingham about four months previous to the birth of the child had an interview with the father of the child, who was then residing at Gisborough, in this Riding, at which interview they had a conversation relative to the maintenance of the child after it should be born. She told him that she would father the child on him, and that he would have to pay for it, to which the man replied, "I will not pay for it; but if you send it to me, I will keep it." Nothing was said by either of them as to the time at which or the mode by which the child was to be sent.

On the day named in the indictment, both prisoners put the child into a hamper, wrapped up in a woollen shawl, and packed with shavings and cotton wool, and the prisoner Mary Falkingham, with the knowledge and connivance of the other prisoner, took the hamper by a passenger vessel on the river Tees from Stockton, where they resided, to Middlesbrough (a distance of about four or five miles), at which latter place she took the hamper to the booking office of the railway station, and there left it, paying 6d. for the carriage thereof, and telling the clerk to be very careful of it and to send it to Gisborough by the next

(1) COPY OF THE INDICTMENT.

The jurors for our Lady the Queen upon their oath present—that Martha Falkingham and Mary Falkingham, on the 25th day of August, 1869, unlawfully and wilfully did abandon and expose a certain child, then being under the age of two years, whereby the life of the said child was endangered.

train, which would leave Middlesbrough in ten minutes from that time. She did not say anything as to the contents of the hamper. The hamper was addressed "Mr. Carrs, Northoutgate, Gisbro'. With care; to be delivered immediately," at which address the father of the child was then lodging.

The hamper was carried by the ordinary passenger train from Middlesbrough to Gisborough, leaving the former place at 7.45 p.m., and arriving at Gisborough at 8.15 p.m. At 8.40 p.m. it was delivered by a railway porter at its address. On its being opened it was found to contain the child alive, and packed in manner before mentioned, with a paper, on which was written "Please take care of this child, for George Beaumont is the father of it."

The child was taken by the relieving officer the same evening to the union workhouse, where it lived for three weeks afterwards, at the expiration of which period it died from causes not attributable to the conduct of the prisoners, or either of them. It was proved to have been a delicate child.

The prisoners' counsel objected that upon these facts there was no evidence to go to the jury that the life of the child was endangered; and secondly, that there was no abandonment and no exposure of the child within the meaning of the statute. The Court overruled the objections, and left the case to the jury, who found both prisoners guilty.

At the request of the prisoners' counsel this Case was granted by the Court for the opinion of the Court of Criminal Appeal, whether the prisoners were rightly convicted.

[The Case was adjourned from the last sitting of the Court, for the purpose of obtaining the judgment of all the judges on it.

*Shepherd* now appeared for the prosecution, but was not instructed at the last sitting. He was not heard.]

COCKBURN, C.J. — We have considered this case. As no counsel appeared at the last sitting of the Court, we supposed that no counsel would be instructed to argue this case, and have accordingly proceeded to form our judgment without hearing an

argument, and it is the opinion of a majority of the judges that the conviction should be affirmed. (2)

*Conviction affirmed.*

BAIL COURT. }  
1869. } REGINA v. JUSTICES OF  
Nov. 25. } SURREY.\*

*Highway—Order of Sessions that Highway shall cease to be a Highway which the Parish is liable to repair—Appeal—27 & 28 Vict. c. 101. s. 21—“Like Proceedings”—5 & 6 Will. 4. c. 58.*

By the 27 & 28 Vict. c. 101. s. 21, when any highway board consider any highway unnecessary for public use, they may direct the district surveyor to apply to two justices to view the same, and thereupon “the like proceedings shall be had as when application is made under the Highway Act, 1835, to procure the stopping up of any highway, save only that the order to be made thereupon, instead of directing the highway to be stopped up, shall direct that the same shall cease to be a highway which the parish is liable to repair,” &c. That Act, by section 2, is to be construed as one with the Highway Act, 1862, which by section 42 is to be construed as one with the 5 & 6 Will. 4. c. 50. By s. 85 of 5 & 6 Will. 4. c. 50, the proceedings for stopping up and diverting a highway are provided for, and by section 88 an appeal to Quarter Sessions is given to any person who would be injured or aggrieved by an order to stop up any unnecessary highway under that Act:—Held, that an appeal to Quarter Sessions lay under the 27 & 28 Vict. c. 101. s. 21, against an order directing that a highway should cease to be a highway which the parish is liable to repair.

At the Michaelmas Quarter Sessions for the County of Surrey, two applications were made to that Court to enrol four

(2) By rule of this Court of 1st of June, 1850, it is ordered that “when any case is intended to be argued by counsel, or by the parties, notice thereof be given to the clerk of this Court at least two days previously to the sitting of the said Court” [See for this rule *Burn’s Justice of the Peace*, 30th ed. vol. 1. p. 271. tit. Appeal.]

\* *Coram Hannen J.*

NEW SERIES, 39.—MAG. CAS.

certificates (made under the 5 & 6 Will. 4. c. 50. s. 85, and the 27 & 28 Vict. c. 101. s. 21, by justices who had viewed certain highways, and had certified that it appeared to them on such view, that the said highways were unnecessary for public use), and to make orders that the said highways should cease to be highways which the parish is liable to repair. Against these applications and orders, Edward Eager had given notice of appeal. Upon the applications being made and being objected to, it was insisted for the applicant that no right of appeal lay against such applications and orders, and that the sessions had no jurisdiction to hear such appeals.

Gates on a former day obtained a rule to shew cause why a writ of mandamus should not issue, directed to the justices of Surrey, commanding them to enter, or cause to be entered, continuances from session to session to the next general Quarter Sessions of the peace to be holden in and for the said county, to hear the several appeals of Edward Eager against the enrolment of four several certificates bearing date on or about the 18th of September, 1869, made for the purpose of rendering irreparable certain highways. (1)

*Robinson, Serjt. (Thesiger with him)* now shewed cause.—This rule should be discharged because no appeal lies under the 27 & 28 Vict. c. 101. s. 21, against an order

(1) The following sections of the statutes are material:—

By the 27 & 28 Vict. c. 101. s. 21, when any highway board consider any highway unnecessary for public use, they may direct the district surveyor to apply to two justices to view the same, and thereupon the like proceedings shall be had as where application is made under the “Highway Act, 1835,” to procure the stopping up of any highway, save only that the order to be made thereupon, instead of directing the highway to be stopped up, shall direct that the same shall cease to be a highway which the parish is liable to repair, and the liability of the parish shall cease accordingly; and for the purpose of such proceedings under this enactment, such variation shall be made in any notice, certificate, or other matter preliminary to the making of such order, as the nature of the case may require. Provided that if, at any time thereafter, upon application of any person interested in the maintenance of any highway, after one month’s previous notice in writing thereof to the clerk of the highway board for the district in which such

II

of justices made under that section, directing that a highway shall cease to be a highway which the parish is liable to repair. No

appeal is directly and expressly given by that section unless the words "the like proceedings shall be had as when applica-

highway is situated, it appear to any quarter or general sessions of the peace, that from any change of circumstances since the time of the making of any such order as aforesaid, under which the liability of the parish to repair the same has ceased, the same has become of public use and ought to be kept in repair by the parish, they may direct that the liability to repair shall revive, from and after such day as they shall name in their order, and such liability shall revive accordingly, as if the first mentioned order had not been made; and the said court may by their order direct the expenses of and incident to such application to be paid as they may see fit.

By 5 & 6 Will. 4. c. 50. s. 84, when the inhabitants in vestry assembled shall deem it expedient that any highway should be stopped up, diverted, or turned, either entirely, or reserving a bridleway or footway along the whole or any part or parts thereof, the chairman of such meeting shall, by an order in writing, direct the surveyor to apply to two justices to view the same, and shall authorise him to pay all the expenses attending such view, and the stopping up, diverting, or turning such highway, either entirely, or subject to such reservation as aforesaid, out of the money received by him for the purposes of this Act. Provided, nevertheless, that if any other party shall be desirous of stopping up, diverting, or turning any highway as aforesaid, he shall, by a notice in writing, require the surveyor to give notice to the churchwardens to assemble the inhabitants in vestry, and to submit to them the wish of such person; and if such inhabitants shall agree to the proposal, the said surveyor shall apply to the justices as last aforesaid for the purposes aforesaid, &c.

Section 85. When it shall appear upon such view of such two justices of the peace, made at the request of the said surveyor as aforesaid, that any public highway may be diverted or turned, either entirely or subject as aforesaid, so as to make the same more commodious or nearer to the public, and the owner of the lands or grounds, through which such new highway so proposed to be made, shall consent thereto by writing under his hand, or if it shall appear upon such view, that any public highway is unnecessary, the said justices shall direct the surveyor to affix a notice, in the form or to the effect of schedule to this Act, annexed in legible characters at the place and by the side of each end of the said highway from whence the same is proposed to be turned, diverted, or stopped, either entirely or subject as aforesaid, and also to insert the same notice in one newspaper published or generally circulated in the county where the highway so proposed to be diverted, turned, or stopped up, either entirely or subject as aforesaid (as the case may be), shall lie for four successive weeks next after the said justices have viewed such public highway, and to affix a like notice on the door of the church of every parish in which such highway

so proposed to be diverted, turned, or stopped up, either entirely or subject as aforesaid, or any part thereof shall lie, on four successive Sundays next after the making such view; and the said several notices having been so published, and proof thereof having been given to the satisfaction of the said justices, and a plan having been delivered to them at the same time, particularly describing the old and the proposed new highway by metes, bounds, and admeasurement thereof, which plan shall be verified by some competent surveyor, the said justices shall proceed to certify under their hands the fact of their having viewed the said highway as aforesaid, and that the proposed highway is nearer or more commodious to the public; and if nearer, the said certificate shall state the number of yards or feet it is nearer, or if more commodious, the reasons why it is so; and if the highway is proposed to be stopped up as unnecessary, either entirely or subject as aforesaid, then the certificate shall state the reason why it is unnecessary; and the said certificate of the said justices, together with the said proof and plan so laid before them as aforesaid, shall, as soon as conveniently as may be after the making of the said certificate, be lodged with the clerk of the peace for the county in which the said highway is situated, and shall (at the quarter sessions which shall be holden for the limit within which the highway so diverted, turned, or stopped up, either entirely or subject as aforesaid, shall lie, next after the expiration of four weeks from the day of the said certificate of the said justices having been lodged with the clerk of the peace as aforesaid) be read by the said clerk of the peace in open court; and the said certificate, together with the proof and plan as aforesaid, as well as the consent in writing of the owner of the land, through which the new highway is proposed to be made, shall be enrolled by the clerk of the peace amongst the records of the said court of quarter sessions. Provided always, that any person whatever shall be at liberty, at any time previous to the said quarter sessions, to inspect the said certificate and plan, so as aforesaid lodged with the said clerk of the peace, and to have a copy thereof on payment to the clerk of the peace at the rate of 6d. per folio, and a reasonable compensation for the copy of the plan.

Section 86. Provided always, that in any case where it is proposed to stop up or divert more than one highway, which highways shall be deemed to be so connected together as that they cannot be separately stopped or diverted without interference one with the other, it shall be lawful to include such different highways in one order or certificate.

Section 87. Provided also, that in the event of any appeal being brought against the whole or any parts of any order or certificate, for diverting more highways than one, it shall be lawful for that Court to decide upon the propriety of confirming the

tion is made under the Highway Act, 1835," are to have that meaning; but it is submitted that they havenot, and that no

whole or any part or parts of such order or certificate, without prejudice to the remaining part or parts thereof.

Section 88. By 5 & 6 Will. 4. c. 50. s. 88, "when any such certificate shall have been so given as aforesaid, it shall and may be lawful for any person who may think that he would be injured or aggrieved, if any such highway should be diverted and turned, or stopped up either entirely or subject as aforesaid, and such new highway set out and appropriated in lieu thereof as aforesaid, or if any unnecessary highway should be ordered to be stopped up as aforesaid, to make his complaint thereof, by appeal to the justices of the peace of the said quarter sessions, upon giving to the surveyor ten days' notice in writing of such appeal, together with a statement in writing of the grounds of such appeal, who is hereby required within forty-eight hours after the receipt of such notice, to deliver a copy of the same to the party by whom he was required to apply to the justices to view the said highway; provided that, in all cases where the said surveyor shall have been directed by the inhabitants in vestry assembled to apply to such justices as aforesaid, when the said surveyor shall not be required to deliver a copy of such notice to any party; provided also, that it shall not be lawful for the appellant to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid, nor on the hearing of such appeal to go into or give evidence of any other grounds of appeal than those set forth in such statement as aforesaid."

Section 89. "In cases of such appeal, the justices of the said quarter sessions shall, for the purpose of determining whether the proposed highway is nearer or more commodious to the public, or whether the public highway so intended to be stopped up, either entirely or subject as aforesaid, is unnecessary, or whether the party appealing would be injured or aggrieved, impanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such quarter sessions; and if, after hearing the evidence placed before them, the said jury shall return a verdict that the proposed new highway is nearer or more commodious to the public, or that the public highway so intended to be stopped up, either entirely or subject as aforesaid, is unnecessary, or that the party appealing would not be injured or aggrieved, then the said Court of quarter sessions shall dismiss such appeal and make the order herein-mentioned for diverting, and turning and stopping up such highway, either entirely or subject as aforesaid, or for diverting, turning and stopping up of such old highway, and purchasing the ground and soil for such new highway, or for stopping up such unnecessary highway, either entirely or subject as aforesaid; but if the said jury shall return a verdict that the proposed new highway is not nearer or more commodious to the public, or that the highway so in-

appeal to Quarter Sessions from an order of justices lies by implication—*Regina v. Hanson* (2), *Regina v. Stock* (3), *Regina v. Justices of Surrey* (4), *Regina v. Recorder of Ipswich* (5). It may well be that the legislature did not intend to give an appeal against this order, though they gave it against an order for stopping up a highway under the old Act, for the orders are different in their nature. The effect of the former order was to get rid of the highway as a highway altogether, and the rights of the public were put an end to, but the effect of the present order is merely to suspend the liability of the parish to repair, which liability may under certain conditions be revived. It was intended too by the later Act to give the highway board more extensive powers than the vestry of a parish formerly had, and it is competent for a private individual, if

tended to be stopped up, either entirely or subject as aforesaid, is not unnecessary, or that the party appealing would be injured or aggrieved, then the said Court of quarter sessions shall allow such appeal, and shall not make such order as aforesaid.

Section 91. Provided always, that if no such appeal be made, or being made shall be dismissed as aforesaid, then the justices at the said quarter sessions shall make an order to divert and turn and stop up such highway, either entirely or subject as aforesaid, and to divert, turn, and stop up such old highway, and to purchase the ground and soil for such new highway, or to stop up such unnecessary highway, either entirely or subject as aforesaid, by such ways and means, and subject to such exceptions and conditions in all respects, as in this Act is mentioned in regard to the highways to be widened, and the proceedings thereupon, shall be binding and conclusive on all persons whomsoever. The new highways so to be appropriated and set out shall be, and for ever after continue, a public highway to all intents and purposes whatsoever; but no old highway, except in the case of stopping up of such useless highway as herein is mentioned, shall be stopped up until such new highway shall be completed and put in good condition and repair, and so certified by two justices of the peace upon view thereof, which certificate shall be returned to the clerk of the peace, and by him enrolled amongst the records of the Court of quarter sessions, next after such order as aforesaid shall have been made pursuant to the directions herein before contained.

(2) 4 B. & Ald. 519.

(3) 8 Ad. & E. 405; s.c. 7 Law J. Rep. (n.s.) M.C. 93.

(4) 2 Term Rep. 504, 510.

(5) 8 Dowl. 113.

his rights are injured or affected, to go before the justices who view and fix the time the notices are issued for publication. An appeal is given in respect of certain matters under section 38 of 27 & 28 Vict. c. 101, which do not include the present, and the concluding words of that section are, "no appeal shall be had except in respect of the matters and upon the grounds hereinbefore mentioned."

*Garth (Gates with him)* in support of the rule.—All the Highway Acts must be considered together and read as one Act according to 27 & 28 Vict. c. 101. s. 2, 25 & 26 Vict. c. 61. s. 42. subsection 1. By 25 & 26 Vict. c. 61. s. 17 the duties of repairing highways devolved upon the highway board of the district in which the highways are, and they are to perform the same duties and to be liable to the same legal proceedings as the surveyor of the parish had been, in respect of roads within a parish. The general public are not represented at the highway board, and the effect of no appeal lying in this case would be to render the fact of this highway being a highway repairable by the parish not traversable at all.

*HANNEN, J.*—I am of opinion that the appeal will lie in this case, and the rule must be made absolute for a mandamus to the justices, commanding them to enter continuances and hear this appeal.

I entirely agree with the observations which have been made, particularly by Mr. Thesiger, that an appeal can only be given by the clearly expressed intention of the legislature. But that is to be ascertained by an examination of the whole of the enactment which is the subject of inquiry, in order to determine really and truly what was the intention of the legislature as it may be collected from the words which they have used. And it is not essential that there should be anything more than a clear intention expressed by them.

In the 21st section of the 27 & 28 Vict. c. 101, the words which are relied upon are these: "When any highway board consider any highway unnecessary for public use, they may direct the district surveyor to apply to two justices to view the same, and thereupon the like proceedings shall be had as where appli-

cation is made under the Highway Act, 1835, to procure the stoppage up of any highway."

And it has been argued by Mr. Gates that the "like proceedings" included all those proceedings up to the final order to be made by the justices at Quarter Sessions, which are found to be contained in the Act of 1835, for the purpose of procuring the stoppage up of a highway, and that the expression, "the like proceedings," includes in it those proceedings which are designated by the general name of appeal to the Quarter Sessions. I think that argument is well founded, because I find by the next sentence in the 21st section, the change which is pointed out as necessary to be made is a change in the order to be made upon those proceedings, namely, that instead of its being an order directing the highway to be stopped up, it shall direct that the same shall cease to be a highway which the parish is liable to repair.

Now the order which formerly would have been the effective order declaring that the highway shall be stopped up is the order which would be made by the justices in quarter sessions under the 91st section of the former Act, and the proceedings which are provided for by the 5 & 6 Will. 4. c. 50, for the purpose of stopping up a highway, are all proceedings which lead up to an order to be made by the justices in quarter sessions. Therefore, although I do find in the 86th and 87th sections the word "order" loosely used in conjunction with "certificate," as though it were applicable to the certificate which is to be given by the two justices under the 85th section, yet when it comes to be looked at it is in effect not an "order" but a certificate with a view to found the jurisdiction of the justices in quarter sessions to be exercised under the 91st section.

The rights of the parties interested are protected in a peculiar way. There is very elaborate machinery provided for notice to be given at one end of the road proposed to be stopped up or otherwise altered, which of course must be supposed to be given for the purpose of informing all persons interested that their rights are likely to be affected, yet the 85th section has provided no means for those persons

making themselves heard before the justices who have to give the certificate, but it only seems to contemplate the fact that they shall have notice that the justices having been put in motion are about to give a certificate which is the essential and *prima facie* condition on the order being made, and that upon that certificate being granted, which they have access to, then their remedy is to be by taking these proceedings which are called an appeal before the justices in Quarter Sessions. But, as I say, there is no operative order until the order of the justices in quarter sessions has been made under the 91st section.

I think, therefore, that in speaking of the "like proceedings" which shall be had where application is to be made to procure the stopping up of a highway—(save only that the order is to be different)—the Legislature intended to include in the words, "the like proceedings," all those proceedings up to the time of making the order by the justices at Quarter Sessions.

I am further strengthened in that view by the reasonableness of it. I am unable to conceive any reason why persons affected by the rendering a road not repairable by the parish for the future, should be put in a worse position than those persons who would have been affected not merely by the stopping up of the road under the original Act, but by changing the road from one character to the other, as by making it cease to be a carriage road and converting it into a bridle road, which would be a change producing similar disadvantageous effects upon a person accustomed to use that road, as the order which is now to be made under the 21st section. I cannot, therefore, understand why a person so injured by the making the road cease to be repairable should not be put in the same position as persons who are injured by the road being stopped up or otherwise altered.

Again, I find that the case of persons interested in the maintenance of a highway is contemplated by the 21st section. For, as I pointed out in the course of the argument, express provision is made by which persons so interested in the maintenance of a highway, if they find after the order has been made that there

is ground for making an alteration in it, shall have the power of having the matter investigated not by two justices simply, but by the justices of quarter sessions. If there be not this proceeding by way of appeal, as it is called upon the original investigation of the matter, this singular anomaly will arise, that the person affected by the original order that the road should be no longer repairable by the parish would be conclusively bound by the certificate of the two justices who should view the road in the first instance, without any means of calling their certificate in question, although the same person, if he desired to have a change made in that original order, would be entitled to go to the justices in Quarter Sessions. I cannot conceive that the legislature could have intended such an anomaly as that.

I do not think the other sections that have been referred to require any further comment from me, except with regard to the 38th section, which undoubtedly deals with the subject of appeal. But although I was for the moment under a different impression, I think that the argument addressed to me by Mr. Garth is sound, namely, that that relates only to accounts of the board, and is in fact a giving (and no doubt it is requisite) an appeal where an appeal would not otherwise exist. That does not touch the question, which is the one I have to determine, of what is the extent of the proceedings under the old Act which are given by the expression "the like proceedings" in the 21st section. For these reasons I think that the rule should be made absolute.

As to the cases that have been cited, I do not think that they are material upon the question which I have to decide in this case. In all cases of this kind that which has to be looked at is the intention of the legislature, and that must always depend upon the particular object which the legislature had in view in the enactment which is the subject of consideration. Therefore whatever reasons there may have been for the decisions in the particular cases cited, I come to the conclusion, by the examination of these Acts in themselves, that it was the intention of the legislature to give this proceeding, which is only loosely called an appeal, it being

in fact a substantive proceeding leading up to the order of the justices in Quarter Sessions which is the only operative order by which a road can be made to cease to be repaired.

I think, therefore, upon these grounds, that the rule should be made absolute in the terms prayed.

*Rule absolute.*

Attorneys—J. & M. Pontifex, agents for H. F. Day, Godalming, for applicant; F. F. Smallpeice, agent for Smallpeice & Co., Guildford, for the justices.

[CROWN CASES RESERVED.]

1870. }  
Jan. 22, 29. } THE QUEEN v. STAINER.\*

*Embezzlement—Prosecution by Illegal Society—24 & 25 Vict. c. 96. s. 68.*

*A society in the nature of a friendly society, but having rules—not enrolled or certified under the Friendly Societies Acts—certain of which rules are in restraint of trade, and therefore void, is not an illegal society in the sense that it is disabled from prosecuting a servant for embezzlement.*

This was a CASE stated by the Chairman of the Worcestershire Quarter Sessions.

At the Worcestershire quarter sessions, held on the 3rd of January, 1870, a prisoner named James Stainer was tried before me on a charge of embezzling certain moneys received by him on account of the society known as "The Power Loom Carpet Weavers' Mutual Defence and Provident Association of Kidderminster and Stourport."

This society was established many years ago under rules, of which a copy accompanies, and is to be taken as part of this case.

In March, 1868, these rules were revised; and such revised rules, of which a copy also accompanies, and is to be taken as part of this case, have ever since been, and are now, in force and define the object and the constitution of the society and the duties of its several officers.

\* Coram Cockburn, C.J., Byles, J., Keating, J., Pigott, B., and Cleasby, B.

Neither the original nor the revised rules were enrolled or certified under the Friendly Societies Acts.

Some time before the revision of the rules the prisoner became a member of the society, and was duly appointed what was called a local secretary, to keep the accounts and collect the contributions of members of the society employed at the works of Messrs. Dixon & Co., of Kidderminster, and after such revision he continued to be a member of the society and to act under the 18th of the revised rules, as such local secretary, until the embezzlement charged against him was discovered towards the end of October, 1869, and it was in respect of moneys received by him, as such local secretary, in September and the early part of October, 1869, that the charge of embezzlement arose.

It was proved by Robert Gillam, the general secretary of the society, who was called on the part of the prosecution, that the 34th and 35th of the revised rules had never been acted upon, that the 37th of the revised rules had been acted upon with respect to the clearance card therein mentioned, but not otherwise, and that the 36th of the revised rules had never been acted upon, except that two members, named respectively Thomas Painter and John Branford, who worked at the said Messrs. Dixon's, and who had each, at different times, taken a son into their working shed to learn weaving contrary to the provisions of the said 36th rule, were told that they would have to pay the fine mentioned in the rule, and both left the society to avoid such payment.

It was also proved by the said Robert Gillam, that, prior to the revision of the rules, the society had occasionally contributed towards the support of men out on strike, and that the last of such occasions was at Christmas, 1866, when a sum of 90*l.* was given to men out on strike at Stourport, and that on one occasion, since the revision of the rules, viz., on the 13th of May, 1868, a sum of 5*l.* per week was voted to some ironmakers and chainmakers who were out on strike. The following entry relating to the last mentioned vote appears in the minute book of the society:—

"At a delegate meeting, held at the



Vine Inn, on Wednesday, May 13th, 1868, the following resolution was unanimously passed—

"Proposed by Joseph Arnold, seconded by James Inston, that the ironmakers and chainmakers have the sum of 5*l.* per week granted to them from the funds so long as they are out, to be equally divided between them."

Except as above mentioned no evidence was given at the trial of any application of the funds of the society towards the support of men on strike, or for any illegal purpose.

There are between 500 and 600 members of the society, and their funds at the present time exceed 2,000*l.*, invested in the Savings' Bank in the names of several sets of trustees appointed for that purpose.

At the close of the case for the prosecution, *Streeten* and *Jelf*, on behalf of the prisoner, objected that the society was proved to have been established, in part at least, for an illegal object, and that I ought on that ground to direct the prisoner to be acquitted. Nos. 30, 35, 36 and 37 of the revised rules were principally relied upon as shewing the illegality alleged, and the following cases were cited in support of the objection:—*R. v. Hunt*, 8 C. & P. 642; *Hornby v. Close*, 36 Law J. Rep. (N.S.) M.C. 43; s. c. Law Rep. 2 Q.B. 153; *Farrer v. Close*, 38 Law J. Rep. (N.S.) M.C. 132; s. c. Law Rep. 4 Q.B. 602.

I overruled the objection and refused to withdraw the case from the consideration of the jury, but I consented to reserve the point, if necessary. The trial accordingly proceeded, and the jury returned a verdict of Guilty, whereupon the prisoner was sentenced to one year's imprisonment with hard labour, and he is now detained in Worcester prison in pursuance of that sentence.

The question on which I respectfully desire the opinion of the Court for the consideration of Crown Cases Reserved, is, whether I was right in overruling the objection so taken on behalf of the prisoner, or whether such objection was valid in point of law and entitled the prisoner to be acquitted.

(Signed) R. Paul Amphlett.

The following revised rules of the society were referred to in the course of the case:—

(1). That this society be known as "The Power Loom Carpet Weavers' Mutual Defence and Provident Association."

(2). That the object of this society shall be—The attainment and maintenance of a fair remuneration for labour, the regulation of the supply of hands and hours of work, to render assistance in cases of sickness, accident, or death, and generally to promote the interests of the members.

(18). A secretary shall be appointed to keep the accounts and to manage the affairs in each firm connected with this association; the appointment of such officers to rest with the members employed at such firms. Such secretary's duties shall be to collect and pay over at head-quarters all contributions, levies, fines, &c.; to arrange for the proper discharge of all claims, and generally to conduct the business of this society in their respective shops. They shall receive for their services 2½ per cent. on all moneys collected by them for the purposes of this society.

(29). Members of this society having a dispute with employers or their managers, foremen or agents, shall in no wise leave their work with a view to receive assistance from the funds of this society until the matter in dispute has been thoroughly investigated, and the sanction of the committee, supported by a majority of members, shall have been obtained.

(30). The hours of work allowed by the Factory Acts shall be the recognised work hours for members of this society; and any member infringing on such hours by working overtime—that is, by working before six o'clock in the morning, after six o'clock in the evening, after two o'clock on Saturdays, or meal hours, shall be fined 2*s.* 6*d.*, and shall likewise be suspended from all the privileges of membership for twelve months.

(35). Any member of this association making application for work at a firm where there is no vacancy, and thereby creating that spirit-crushing influence which all good men deplore, shall, upon proof of the offence, be fined 2*s.* 6*d.* in each and every case, such fines to be placed to the offender's arrears.

(36). Any member of this society taking a person into a shop to learn the weaving where no vacant loom exists, and against the expressed wish of his shopmates, shall be fined 2*s.* 6*d.*, and shall likewise be suspended from all privileges of membership for twelve months.

(37). Should any member leave one firm to work at another, he shall get a clearance card to certify his position with respect to this society; and if he be in arrears of his contributions, levies, fines, &c., he shall pay in the same to the secretary acting for the shop wherein he has obtained employment. And any member producing a false certificate shall be fined 1*s.*; and any secretary wilfully drawing up a false certificate shall be expelled from his office.

*F. T. Streeten* (*Jelf* with him) for the prisoner (Jan. 22).—Embezzlement is an offence created by statute, and can only be

committed by a clerk or servant, or one employed in the capacity of a clerk or servant, and in respect of money or goods received by him for or on account of his master or employer, and it is submitted that the employment must be a lawful one, and that if it be unlawful the employer cannot be permitted to come into a court of justice and prosecute the employed for an offence arising out of the relation of master and servant in such an employment. This society is illegal, as being in restraint of trade, and against public policy. This appears from the 35th, 36th and 37th rules. (He read these rules.) In *Hilton v. Eckersley* (2), it was held that the obligee of a bond made to carry out a combination of owners of mills to work such hours and pay such wages only as the majority agreed, could not sue upon it because it was made in restraint of freedom of trade. In *Hornby v. Close* (3), a society though not registered under the Friendly Societies Acts had deposited a copy of its rules with the Registrar of Friendly Societies, under 18 & 19 Vict. c. 63. s. 44; some of its rules were laudable, and some void, as having for their object the support of strikes amongst workmen, and so being in restraint of trade; and it was held that the illegal rules prevented such a society from being able to take advantage of the summary remedy before justices, provided by the 24th section of the same Act, against a member who misapplied moneys of the society in his hands. In *Farrer v. Close* (4), the case of *Hornby v. Close* (3) was followed, though the Court were divided upon the question whether the rules in the latter case brought it within the former decision. There, too, the actual operation of the society was taken into consideration in construing the object of the rules.

[COCKBURN, C.J.—But this is not a society violating any criminal law.]

It is contended that such a society as this is even indictable, but it is submitted that it is not necessary to go so far, and

that a society established for purposes which are against public policy is unlawful to the extent contended for. In *Russ. on Crimes*, Ed. by Greaves, vol. ii. p. 442, it is stated, that a person cannot be convicted for embezzlement as clerk or servant to a society that is illegal. The same rule is stated in *Archbold's Criminal Pleading*, page 412, and other writers. In *The King v. Hunt* (5), a society, the members of which on admission had an unlawful oath administered to them, was held to be within that rule.

[COCKBURN, C.J.—Have not the legislature recognised societies established with such objects as these rules point to?]

The 32 & 33 Vict. c. 61 has so far declared such societies legal as to extend the protection of the 24th section of the Friendly Societies Act, 1855, for the punishment of frauds and impositions to their funds; but this Act is only in force for a year, and it is submitted is only a tentative Act, and it was evidently the impression of the legislature that no protection for such funds existed.

[COCKBURN, C.J.—There may have been a misapprehension of the effect of *Hornby v. Close* (3), or the legislature may have intended to give an additional remedy, and did not mean that such societies had not the ordinary remedies at common law.]

The principle is that our Courts will not recognise or lend themselves to aid persons who cannot come before them with clean hands. It is a principle of public policy and not of favour to the individual—*Broom's Legal Maxims*, 3rd ed., p. 663, and upon such a principle there can be no distinction between civil and criminal illegality.

[COCKBURN, C.J.—With respect to the objects of this society being against public policy, it would seem that the legislature have afforded an answer to that argument by passing the 32 & 33 Vict. c. 61.]

So, before the decision against the bond in *Hilton v. Eckersley* (2), the 6 Geo. 4. c. 129 had made combinations to raise or lower the rate of wages and to regulate the hours of labour no longer punishable, unless accompanied by force, threats, intimidation, or molestation.

(5) 8 Car. & P. 642.

(2) 6 E. & B. 47-66; 24 Law J. Rep. (N.S.) Q.B. 355; Ex. Ch. 25 Law J. Rep. (N.S.) Q.B. 199.

(3) 36 Law J. Rep. (N.S.) M.C. 43; Law Rep. 2 Q.B. 153.

(4) 38 Law J. Rep. (N.S.) M.C. 132; Law Rep. 2 Q.B. 602.

[COCKBURN, C.J.—Do you say that a person would be justified in *stealing* the goods of this society?]

No. In larceny it is sufficient to shew the possession of the property stolen, and it is unnecessary to account for that possession, and no one has a right to take from another what is in his possession; but in embezzlement, the money is intercepted before it gets into the possession of the master, who has therefore to shew that he has a right to it which the law will recognize. Under the Bailees Act it is submitted that there could be no conviction of the bailee if the bailment were for an unlawful purpose.

Moreover, this society is indictable at common law. Any conspiracy to do an unlawful act which is contrary to public policy, or even to commit a trespass, is indictable. Forestalling, regrating and engrossing, which were acts of the former nature, were indictable at common law as well as by statute, and would be so now but for 7 & 8 Vict. c. 24. In *Hilton v. Eckersley* (2), Crompton, J., in delivering his judgment, p. 53, said, that he thought combinations like those disclosed in the bond in that case, were illegal and indictable at common law, as tending directly to impede and interfere with the free course of trade. The precedents of indictments for combinations of two or more persons to raise wages were all framed on the common law. And in the judgment of the Court of Exchequer Chamber in *Hilton v. Eckersley* (2), the Court were careful to abstain from giving any opinion whether such combinations were or were not criminal and punishable. So in *Hornby v. Close* (3), the Court expressly and intentionally abstained from saying that such rules having for their object the support of men on strike were not criminal.

[COCKBURN, C.J.—And carefully refrained from saying that they were criminal.]

*J. O. Griffiths* for the prosecution (Jan. 29).—It is admitted that if this society were a criminal partnership it could not enforce the law against its members, which is the effect of *The Queen v. Hunt* (5); but it is a legal partnership, with some of its rules, e.g. 35 and 36, simply void as being in restraint of trade. The contract

is divisible, and the Court will uphold the good, and reject the bad part—*Chitty on Contracts*, p. 617, 8th ed., *Price v. Green* (6). *Tenant v. Elliott* (7), shews that A. receiving money to the use of B., on an illegal contract between B. and C., cannot set up the illegality as a defence to B.'s action for money had and received. In *Sharp v. Taylor* (8) it was held, in the Court of Chancery, that one of two partners who had possessed himself of the property of the firm, could not be allowed to retain it by merely shewing that, in realizing it, some provision of some Act of Parliament had been violated. This society was not registered as a Friendly Society, nor was a copy of its rules deposited with the registrar; it cannot therefore be brought directly within section 44 of 18 & 19 Vict. c. 63. But 32 & 33 Vict. c. 61 shews the feeling of the legislature. [He was then stopped.]

*F. T. Streeten* in reply.—The cases cited on the other side were cases of illegality in the transactions, not illegality in the constitution of the societies. This is a criminally illegal association.

[BYLES, J.—Does not the 32 & 33 Vict. c. 61. assume that these rules in restraint of trade are unlawful but not criminal?]

That Act expressly applies only to societies having rules as to the *terms* of employment.

[COCKBURN, C.J.—It does not say they must register, and the omission is an argument that they should have the benefit whether registered or not. If you are right, a society might be entitled to prosecute one of their members before justices, and yet could not indict him at the assizes, and would themselves be liable to be indicted.]

One person may lawfully hiss at a theatre, but if several go by agreement with the intention and for the purpose of hissing and so condemning the performance, they are guilty of unlawful conspiracy, and indictable at common law—per Lord Mansfield, C.J., in *Clifford v. Brandon* (9).

(6) 16 Meo. & W. 346; s.c. 16 Law J. Rep. (N.S.) Exch. 108.

(7) 1 Bos. & P. 3.

(8) 2 Phillips 801.

(9) 2 Campb. 358.

[COCKBURN, C.J.—Against that case my sense of justice has always revolted.]

In 4 *Wentworth's Pleading*, p. 100, there is a precedent of an indictment for conspiracy against journeymen leather-dressers, which shews that this society is indictable. But even if this association be not criminal, it is sufficient that it could not maintain an action against a member for money received. The very moneys alleged to have been embezzled by the prisoner may have been appropriated to the illegal purposes of the society.

COCKBURN, C.J.—It is not necessary to determine how far the criminality of an association formed for criminal purposes would affect its title to property. There is nothing which can be held criminal in the constitution or purposes of this society. The primary purposes indeed were eminently laudable; it was originally a friendly society, though not registered as such. But there were one or two of its rules, with reference to employment and the rate of wages, which were designed to further the purposes of a trades union. According to *Farrer v. Close* (4), and *Hilton v. Eckersley* (2) in the Exchequer Chamber, these purposes would be illegal, and these particular rules, as being in restraint of trade, would be void, but the Court abstained from saying that they were criminal. It does not follow because rules may be against public policy that they are therefore criminal. The main purposes of a society must be criminal before the question of criminality could arise. I entertain no doubt about this case. The last Act, 32 & 33 Vict. c. 61, says that associations having rules, which as being in restraint of trade are void, shall have the advantage of the 18 & 19 Vict. c. 63. It was argued that the 32 & 33 Vict. c. 61 has reference only to registered societies; but even if this were so, it is equally an indication of the intention of the legislature that such societies as the present shall not have a defective title to property. It is a declaration by the legislature that such societies are not criminal, because we cannot suppose that the legislature would say a criminal society should have those advantages. There could be nothing more preposterous than that this society

should be able to prosecute before justices, and yet not able to indict at the assizes. There is a clear declaration by the legislature that such a society as this shall have no defect in its title to property.

BYLES, J.—The objects of this society may be unlawful in the sense that some of the rules are void, but they are not criminal. I agree with all that my Lord has said as to the effect of the last statute.

KEATING, J.—The only illegality is that two of the rules are in restraint of trade, and could not be enforced. Is that a criminal illegality which would deprive the society's funds of the protection of the law, that is, from being plundered? I think not. Even if the last statute were confined to societies registered as friendly societies, yet it is a clear indication of the intention of the legislature, that the mere fact of some of its rules being in restraint of trade shall not deprive a society of the protection of the criminal law. Mr. Streeten argued that the members of this society would be indictable at Common Law. It seems to me, in the absence of authority, that they would not. He could not give an instance of such an indictment, and I cannot think that it would lie. It is clear that the purpose of the legislature was to protect these societies where not conducted with violence and intimidation. I agree with my Lord as to the effect of the last statute.

PIGOTT, B.—The legislature in the last statute recognises the right of property in these societies, and that makes an end of the case.

CLEASBY, B., concurred.

*Conviction affirmed.*

Attorneys—Miller Corbett, Kidderminster, for prosecution; Henry Saunders, Junr., Kidderminster, for prisoner.

[CROWN CASE RESERVED.]

1870. }  
Jan. 22. } THE QUEEN v. FRENCH.\*

*Forgery—Acquittance or receipt for money—24 & 25 Vict. c. 98. s. 23—Clearance ticket—Friendly Society.*

*A friendly society had branches in various towns. A member belonging to one*

\* Coram Cockburn, C.J., Byles, J., Keating, J., Pigott, B., and Cleasby, B.

*branch could not be received into the Court of another branch as a clearance member without a document called a "clearance" certifying that he had paid all the dues and demands of the branch to which he belonged, and authorising the other branch to receive him :—Held, that such "clearance" was not an acquittance or receipt for money within section 23 of 24 & 25 Vict. c. 98. and that a conviction for forging such a document must be quashed.*

Case reserved by Lush, J.

The indictment was framed on the 24 & 25 Vict. c. 98. s. 23, for forging an acquittance or receipt for money (1).

The prisoner was secretary of a friendly society, called the Ancient Order of Foresters, which had branches in various towns. A member removing from one place to another, who had paid all dues, was entitled to a document in the form hereafter set out, called a "clearance," which admitted him to all the privileges of membership at any place where a branch of the society existed.

The qualifications for membership were the payment of an entrance fee, a certain time of probation, and certain general payments made at meetings of the society, called "Courts." At these Courts, constituted by the presence of the chief ranger, the sub-chief ranger, the treasurer, the secretary, and two members at the least, the payments were made to the secretary, and by him handed over there and then to the treasurer. Neither the chief ranger, nor the sub-chief ranger, received or was responsible for any of these payments, nor were their signatures to a "clearance" understood as importing that any money had been received by them or either of them; but a "clearance" without their signatures would not have been accepted.

(1) 24 & 25 Vict. c. 98. s. 23.—"Whoever shall forge or alter, dispose of, or put off, knowing the same to be forged or altered, any undertaking . . . or accountable receipt, acquittance or receipt for money, or for goods . . . with intent in any of the cases aforesaid to defraud, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

Edward Cragg, a member of the society, was entitled to a "clearance," but the money he had paid had not been accounted for by the prisoner to the treasurer.

The prisoner sent to Cragg a "clearance," of which the following is a copy, and to which he forged the names of the chief and the sub-chief rangers :—

"Ancient Order of Foresters Friendly Society.

"Member's Clearance.

"Authorised form pursuant to general law.

"Saml. Shawcross, per. sec.

"Court Painters, No. 4,076, of the Leeds district, held at the Harewood Arms, Harewood Street, in Leeds, in the county of York.

"To all whom it may concern.

"These are to certify,

"That the bearer hereof, Brother Edward Cragg, a married man, now aged 26 years, by trade a painter, was admitted a member of the above Court, on the 25th day of June, 1864, and has paid all dues and demands up to the 29th day of August, 1868.

"We therefore hereby authorise any Court of the order to accept the said brother as a clearance member, subject to the conditions expressed in the general laws to which, so far as they may apply to the above Court, we undertake to conform.

"In witness whereof we have, by order of the Court, and in its behalf, subscribed our hand and affixed the seal of the Court.

"Thomas Maw, Chief Ranger,

"John Doyle, Sub-chief Ranger,

"George French, Secretary.

"Cautions.—The member to whom this clearance is granted must throw it into some legal Court within two calendar months from the time of drawing the same, and should it be refused by any Court it must be returned to the Court which granted it within one calendar month, or the member will become suspended. See General Laws, 92, 93, 94, 95.

"We, the undersigned, declare that this is the document presented to this Court, No. 1,567, by Brother Cragg, on October 26th, 1868.

"William Tranter, C.R.,

"Nathaniel Powell, S.C.R.,

"Thomas Bates, Secretary.

"Court 1,567.

"May 24, 1868."

The question for the opinion of the Court is, whether the above document is an acquittance or receipt for money within the meaning of the statute?

No counsel appeared.

*Per Curiam.*—The question in this case is whether the document set out in the case is an acquittance or receipt for money within the 23rd section of the 24th & 25th Vict. c. 98. We are of opinion that it is not, and therefore this conviction must be quashed. The prisoner was a member of a friendly society, called the Ancient Order of Foresters, which had branches in various towns. A member of one branch removing to a place where another branch held its Court, would not be received into such other branch without a clearance shewing that he had paid all dues and demands of the branch from whence he came. The prisoner was secretary of the society, and had received from a member all the fees due to his branch, and the member thereupon became entitled to a clearance. The prisoner ought to have paid such moneys over to the treasurer of the society, but did not do so, and sent nevertheless to the member his clearance. To this clearance the prisoner forged the signatures of the chief ranger and sub-chief ranger of the society, because without such signatures the clearance would not have been accepted. The prisoner was indicted for forging this document, as being an acquittance or receipt for money under the above statute, but we think it is rather a certificate certifying that a member has paid up his dues, and an authority to another Court to accept the brother as a clearance member, and cannot be treated as an acquittance or receipt for money within the statute.

*Conviction quashed.*

[CROWN CASE RESERVED.]

1870. }  
Jan. 22. } REGINA v. PARKER.\*

*Evidence*—Depositions of person deceased, or so ill as not to be able to travel—Signature of Justices—11 & 12 Vict. c. 42. s. 17—Indictment—Surplusage.

By the 11 & 12 Vict. c. 42. s. 17. the depositions of the witnesses produced on the examination before justices against a person charged with an indictable offence, "shall be read over to, and signed respectively by, the witnesses," and "shall be signed also by the justice or justices taking the same;" and if, upon the trial of the person accused, it shall be proved that any person whose deposition shall have been taken as aforesaid is dead, or so ill as not to be able to travel, then (after proof of certain matters), "if such deposition purport to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition in evidence in such prosecution, unless it shall be proved that such deposition was not in fact signed by the justice purporting to sign the same." By the schedule (M) to the Act, the caption runs, "the examination of C. D. and E. F. taken, &c." And the conclusion is, "the above depositions of C. D. and E. F. were taken and (sworn) before me at — on the day and year first above mentioned. On the trial of a person committed by justices under the above section, a deposition of a deceased witness appeared to be the second of four depositions made at the same hearing, all of which were pinned together, each occupying more than one piece of paper. The justices had not signed either of the sheets on which the depositions were written, except the last, and that sheet did not contain any part of the deposition in question, but their signatures were appended at the end of the last deposition to a statement in the form copied from schedule M: "The above depositions (naming the several witnesses, and amongst them the deceased) were taken and sworn before us at, &c.:"—Held, that such deposition was properly received in evidence, and that it is not necessary that the separate deposition of each witness should be signed by the

\* Coram Cockburn, C.J., Byles, J., Keating, J., Pigott, B., and Cleasby, B.

justices, but that it is sufficient if the depositions are signed as a body by the justices, according to the conclusion of schedule M to the act.

The indictment charged the prisoner with the offence of making a false declaration before a justice, that he had lost a pawnbroker's ticket, "whereas in truth and in fact he had not lost the said ticket, but had sold, lent, or deposited it, as a security to one S. O., &c.:"—Held, that the allegation "but had sold, lent, or deposited it, &c.," did not render the indictment ambiguous or uncertain, but was pure surplusage, which might be rejected and need not be proved.

*The Queen v. Richards* (5) overruled.

Case reserved by LUSH, J.

The prisoner was convicted on an indictment which was in the following form:—

*Northumberland to wit*—The jurors for our Lady the Queen on their oath present that William Parker did, on the sixth day of April, A.D. 1869, at the parish of Tynemouth, in the borough of Tynemouth, in the county of Northumberland, wilfully and corruptly make a false declaration before John Byrom Bramwell, Esquire, one of Her Majesty's justices of the peace for the said borough of Tynemouth, that he the said William Parker had lost a certain note or memorandum being a pawnbroker's ticket. Whereas in truth and in fact he had not lost the said ticket, but had sold, lent, or deposited it as a security to one James Carter, as he the said William Parker well knew at the time he made the said false declaration, against the form of the statute in such case made and provided.

Misdemeanor in making a false declaration.  
(Mr. Stevenson.)

Witnesses,

James Carter.  
James Mitchell.  
Sarah Frame.  
John Hewitt, P.C.

The deposition of a deceased witness was tendered and objected to on the ground that it did not purport to be signed by the justices before whom it purported to have been taken as required by the 11 & 12 Vict. c. 42. s. 17 (1).

(1) By 11 & 12 Vict. c. 42. s. 17. "In all cases where any person shall appear or shall be brought before any justice or justices of the peace, charged with an indictable offence, whether committed in England or Wales, or upon the high seas, or on land beyond the sea, or whether such person appear voluntarily upon summons, or have been

The deposition in question was the second of four depositions made at the same hearing, all of which were pinned together. Each occupied more than one sheet of paper.

The justices did not sign either of the sheets on which the depositions were written, except the last (that sheet not containing any part of the depositions in question), and their signature was appended at the end of the last deposition to a statement in the following form, copied from schedule M (2) of the 11 & 12 Vict.

apprehended with or without warrant, or be in custody for the same or any other offence, such justice or justices before he or they shall commit such accused person to prison for trial, or before he or they shall admit him to bail, shall, in the presence of such accused person, who shall be at liberty to put questions to any witness produced against him, take the statement (M) on oath, or affirmation of those who shall know the facts and circumstances of the case, and shall put the same into writing, and such depositions shall be read over to, and signed respectively by, the witnesses who shall have been so examined, and shall be signed also by the justice or justices taking the same; and the justice or justices before whom any such witness shall appear to be examined as aforesaid, shall, before such witness is examined, administer to such witness the usual oath or affirmation, which such justice or justices shall have full power and authority to do. And if upon the trial of the person so accused as first aforesaid, it shall be proved by the oath or affirmation of any credible witness, that any person whose deposition shall have been taken as aforesaid, is dead, or so ill as not to be able to travel, and if also it be proved that such deposition was taken in the presence of the person so accused, and that he or his counsel or attorney had a full opportunity of cross-examining the witness, then, if such deposition purport to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution without further proof thereof, unless it shall be proved that such deposition was not in fact signed by the justice purporting to sign the same."

(2) SCHEDULE (M).

To wit. } The examination of [D. of  
farmer] and E. F. of labourer],  
taken on [oath] this day of , in the  
year of our Lord, at in the said  
[county], in the presence and hearing of A. B., who  
is charged this day before [me] for that he the said  
A. B., on at [&c., describing the  
offence as in a warrant of commitment]. This de-  
ponent C.D. on his [oath] saith as follows [&c.]:  
[stating the deposition of the witness as nearly as  
possible in the words he uses. When his deposi-

c. 42. "The above depositions of," naming the several witnesses, and amongst them the deceased, "were taken and sworn before us at, &c.," according to the form in the schedule.

I allowed the deposition to be read, subject to the opinion of this Court on its admissibility.

It was objected, after the jury were sworn and charged, that the indictment was bad for uncertainty, as it alleged in the alternative that the prisoner "had sold, lent, or deposited it." I overruled the objection, but as I meant to reserve the other point, I also reserved this for the opinion of the Court (see 1 C. & K. 243).

If the deposition ought not to have been received, or if the indictment is bad, the conviction is to be quashed.

*Greenhow*, for the prisoner.—The depositions ought not to have been admitted in evidence, on the ground that the separate deposition of each witness was not signed by the justice before whom they were taken, at the end of each such deposition respectively. He referred to *Regina v. Osborne* (3), *Regina v. Lee* (4), *Regina v. Richards* (5), *Regina v. France* (6), *Regina v. Johnson* (7), and *Regina v. Young* (8).

It is also objected that the indictment was bad, on the ground that the description of the offence being in the alternative was uncertain, and embarrassed the prisoner in his defence. Even the allegation charges the offence in the disjunctive, and is therefore bad (9). Even if the allegation is surplusage, it must be accurately stated, or the indictment is bad.

[COCKBURN, C.J.—But here the surplusage was not matter touching the substance of, or ingredient in, the offence, but was in respect of something subsequent to the substance.]

tion is complete let him sign it]. And this deponent E. F., upon his oath saith as follows [&c.]. The above depositions of C. D. and E. F. were taken and [sworn] before me at \_\_\_\_\_ on the \_\_\_\_\_ day and year first above mentioned.

(3) 8 Car. & P. 113.

(4) 4 Fost. & F. 63.

(5) 6 Fost. & F. 860.

(6) 2 Moo. & R. 207.

(7) 2 Car. & K. 354.

(8) 3 Car. & K. 166.

(9) Archb. Cr. Pl. 16th ed. p. 48.

COCKBURN, C.J.—I am of opinion that the other conviction must be affirmed, and that both objections fail. With respect to the admissibility of the depositions: in *Regina v. Young* (8), tried before Mr. Greaves, with whose decision Mr. J. Williams concurred, and in *Regina v. Lee* (4), the depositions were signed as here, and held admissible. In *Regina v. Richards* (5), tried before me, the same question presented itself, but my attention was then only called to the 17th section of the statute, and not to the schedule. Afterwards, upon Mr. Oke, the clerk to the Lord Mayor, calling my attention to the form and language of the schedule, and reading the two together, I thought that, inasmuch as the section of the statute left the matter in doubt by the omission of the word "respectively," which had been used in reference to the signatures of the witnesses, when it came to speak of the magistrate's signature, and the schedule makes the magistrate certify by his signature at the end of the depositions, that the "above depositions," in the plural number, were taken before him, it seemed to me to be plain that the legislature did not intend to exact from magistrates their signature to each deposition, but only to the depositions as a body. And I accordingly wrote to Mr. Oke to say that I did not intend on a future occasion to abide by the decision I had given in *Regina v. Richards* (5). And I still think, that it is sufficient for the depositions to be signed according to the form given in the schedule. In this case the depositions were signed in that manner, and I therefore think they were admissible. With respect to the second objection, I think that the words objected to were pure and simple surplusage. The offence charged in the indictment was that the prisoner made a false declaration that he had lost the pawnbroker's ticket, and the words objected to were a mere statement of evidence, and not part of the description of the offence, nor an essential ingredient in the offence, and therefore I think immaterial, and the objection made ought not to prevail.

BYLES, J.—I think these depositions purported to be signed by the justices before whom they purported to be taken, in the manner required by the act. The



different sheets appear to have been attached together at the time of the signature, and it can make no difference whether they were attached by a pin or in any other way, as to the continuity of the piece of paper. As to the second objection, it is necessary to state in the indictment what the declaration was, and that it was false, but it cannot be necessary to allege further, how the declarant had disposed of the ticket, for that is to ask the prosecutor to state what in all probability he cannot know.

KEATING, J., PIGOTT, B., and CLEASBY, concurred.

*Conviction affirmed.*

[IN THE COURT OF QUEEN'S BENCH].

1870. }  
Jan. 27. } *Ex parte* SHORT.

*Wine and Beerhouse Act, 1869, 32 & 33 Vict. c. 27. s. 17—11 & 12 Vict. c. 40. s. 2—Beerhouse—Second Offence—Refusing to admit Constable—Keeping House open during prohibited hours on Sunday.*

*In the month of August, 1869, and after the passing of the 32 & 33 Vict. c. 27, S., a beerhouse keeper, was convicted for keeping her house open for the sale of beer on Sunday, before half-past 12 o'clock in the day time. On the 6th October, 1869, she was convicted for refusing to admit a constable to her premises:—Held, that the justices had power, under s. 17 of 32 & 33 Vict. c. 27, to treat this as a second offence, and under 4 & 5 Will. 4. c. 85. s. 7, to order that S. should be disqualified from selling beer, &c., by retail, for the space of two years.*

This was an application for a rule *nisi*, calling on two justices of Cheshire to shew cause why a writ of certiorari should not issue to bring up a conviction made by them, on the 6th October last, against Margaret Short, a person licensed to sell beer, for refusing to admit a constable to her premises. The justices adjudged that she should be disqualified from selling beer, ale, &c., for two years. The conviction

did not shew any previous offence of the same kind, but it recited four other previous convictions for other offences, one of which was since the passing of "The Wine and Beerhouse Act, 1869" (32 & 33 Vict. c. 27), and was for keeping the house open for the sale of beer on Sunday, before half-past twelve o'clock at noon, but the other three convictions were previous to the passing of the last mentioned Act. It appeared from the affidavits that she had never been previously convicted of the offence of refusing to admit a constable into her house, or of any of the offences enumerated in the first part of the 17th section of The Wine and Beerhouse Act, 1869, since the passing of that Act.

*J. Paterson*, in support of the application. The justices conceived that they had a right, under 4 & 5 Will. 4. c. 85. s. 7, to order that Margaret Short should be disqualified for two years, but this is not so (1). The conviction does not shew any first offence which could give them any such power, and it appears from the affidavits that there was none. But it will be said that by reason of the 17th section of The Wine and Beerhouse Act, 1869, the keeping of the house open on Sunday

(1) Statute 4 & 5 Will. 4. c. 85. s. 7. "That it shall be lawful for all constables and officers of police, and they are hereby authorised and empowered, to enter into all houses which are or shall be licensed to sell beer or spirituous liquors to be consumed upon the premises, when and so often as such constables and officers shall think proper; and if any person having such license as aforesaid, or any servant or other person in his employ or by his direction, shall refuse to admit, or shall not admit such constable or officer of police into such house or upon such premises, such person having such license, shall, for the first offence, forfeit and pay any sum not exceeding five pounds, together with the costs of the conviction, to be recovered within twenty days next after that on which such offence was committed, before one or more justices of the peace; and it shall be lawful for any two or more justices, before whom any such person shall be convicted of such offence for the second time, to adjudge (if they shall so think fit) that such offender shall be disqualified from selling beer, ale, porter, cyder, or perry, by retail, for the space of two years next after such conviction, or for such shorter space of time as they may think proper."

became a second offence; but that again is an error; for the keeping the house so open is not an offence against the tenor or conditions of a license granted to Margaret Short under any of the recited acts, or an offence for which a penalty is imposed by any of said recited acts (2).

[BLACKBURN, J.—Is not the keeping of the house open during the prohibited hours an offence against the tenor or conditions of the license granted under any of the recited Acts?]

No, it was an offence under 3 & 4 Vict. c. 61. s. 15, but that part of that Act is repealed by 11 & 12 Vict. c. 49. s. 2, and a new enactment is provided with reference to this subject under the 4th section.

[BLACKBURN, J.—But is it not equally an offence against the tenor of the license, though it may now be only punishable under 11 & 12 Vict. c. 49?]

No, it is now a substantive offence with a higher penalty, and with an alteration in the hours. See *Regina v. Whiteley* (3). The Wine and Beerhouse Act, 1869, recites several Beerhouse Acts, but not the 11 & 12 Vict. c. 49, under which the offence is punishable.

The Court granted a rule *nisi*, against which

*G. Taylor* shewed cause in the first instance. The justices had power to make the order complained of. It is true that there had not been a previous offence of refusing to admit a constable, but there had been one of keeping the house open within the prohibited hours on Sunday.

(2) 32 & 33 Vict. c. 27. s. 17.—In the following cases, that is to say,—

1. Where any person is convicted of an offence against the tenor or conditions of a license granted to him under any of the said recited Acts, or of an offence for which a penalty is imposed by any of the said recited Acts;

2. Where any person is convicted of an offence against the tenor of a license granted to him under the said Act of the ninth year of the reign of King George the Fourth;

If any previous conviction or convictions, since the passing of this Act, for any of the said offences be proved against him, the offence of which he is last convicted shall be deemed to be a second or third offence, as the case may be: provided that the said previous conviction or convictions did take place within the five years next preceding."

(3) 3 Hurl. & N. 143.

That was an offence which comes within both clauses of the 17th section of the Wine and Beerhouse Act, 1869, for although the mode of punishment may be supplied by the 11 & 12 Vict. c. 49, it is an offence against the tenor and effect of the license granted under the Beerhouse Acts. The 11 & 12 Vict. c. 49 was, no doubt, passed for the purpose of regulating the sale of beer, and other liquors on the Lord's Day, but the Beerhouse Acts had provided for the keeping the house open before half-past 12 o'clock on Sundays, before the 11 & 12 Vict. c. 49 was passed. It is also an offence against the tenor of a license granted to her under 9 Geo. 4. & 1 Will. 4. c. 64; see the form of license in the schedule to that Act.

(He was then stopped.)

*J. Paterson* in support of the rule.—The conviction follows the words of the 11 & 12 Will. 4. c. 49, which is not one of the recited Acts.

COCKBURN, C.J.—The offence created by that statute is identical with the things which had been prohibited by the licenses. It is against the tenor and condition of the license, and the legislature framed the 17th section with the view of meeting such cases. The offence sufficiently comes within the description given in that section.

BLACKBURN, J.—The obvious meaning is, that if a conviction takes place after the commission of one of a certain class of offences since the passing of The Wine and Beerhouse Act, 1869, the offence of which the person is last convicted shall be deemed a second offence, with the consequences attached to the committing of a second offence.

MELLOR, J.—I am of the same opinion.  
*Rule discharged with costs.*

Attorneys—R. M. & F. Lowe, agents for E. J. Kent, Liverpool, for the prosecution; Makinson & Carpenter, agents for Bretherton & Co., Birkenhead, for defendant.

[IN THE COURT OF QUEEN'S BENCH.]

1870. } THE NORTH EASTERN RAILWAY  
 Jan. 26. } COMPANY, *appellants*, v. THE  
               LOCAL BOARD OF LEADGATE,  
               *respondents*.

*Local Government Act, 1858 (21 & 22 Vict. c. 98), s. 55—General district Rate—Railway not constructed under Parliamentary Powers—Land rateable upon reduced Scale.*

*By the Local Government Act, 1858 (21 & 22 Vict. c. 98), s. 55, provision is made for general district rates, and it is enacted that the occupier of land used only as a railway constructed under the powers of any Act of Parliament for public conveyance shall be assessed in respect of the same in the proportion of one-fourth part only of such net annual value thereof:—Held, that a line of railway which though actually worked and used under the provisions of different Acts of Parliament, was originally constructed by private agreement, without any parliamentary powers, is not rateable upon the reduced scale, but upon the full annual value.*

Upon appeal by the North Eastern Railway Company to the General Quarter Sessions for the county of Durham, against an assessment for a general district rate, made on the 27th of December, 1867, by the Local Board for the district of Leadgate, under the powers of "The Local Government Act, 1858," the following facts were stated in the form of a special case for the opinion of the Court.

## CASE.

1. In the year 1834, by deed of settlement, dated 3rd of February, 1834, a company called the Stanhope and Tyne Railroad Company, was established for the purpose of working certain limestone quarries, near Stanhope, in the county of Durham, and certain coal mines in the parish of Lanchester, in the same county, called the Pontop and Medomsley Collieries, and for the carriage of coals, limestone and other articles of merchandise, along a railway then in course of formation by the company, and called the Stanhope and Tyne Railroad.

2. The line of the railway commenced  
 NEW SERIES, 39.—MAC. CAS.

at certain lime quarries in the parish of Stanhope, and passed through a point called the Carr House, at Pontop, and from thence to the River Tyne, in the town of South Shields, the whole length of the line being thirty-five miles or thereabouts.

3. In the year 1834 the Stanhope and Tyne Railroad Company completed the construction of their intended railroad, and it was opened for use in the month of September in that year. The company had no powers conferred upon them by Act of Parliament to enable them to construct the railway, and it was not by virtue of any powers conferred by Act of Parliament that the railway was constructed. The land upon which the railway was constructed was not the property of the company and the company did not obtain by purchase or otherwise the property in the land, nor had the company any right or title to use the same except as hereinafter mentioned. The company before and at the time of the construction of the railway entered into agreements with the owners of land upon which the railway was constructed, by which agreements, in consideration of half-yearly payments, made by the company to the owners, the company obtained leave to use on certain terms and for certain periods the land for the purposes of the railway. The whole of the railway was constructed upon lands which the company obtained leave to use by virtue of such agreements except a portion within the district of Leadgate, which was constructed upon what was then and is used as a public highway.

4. The Stanhope and Tyne Railroad Company, which besides the railway also constructed staiths, with suitable machinery for loading and unloading vessels, in the River Tyne, used the line of railway for the purposes aforesaid, and also for the conveyance of passengers and goods from the month of September, 1834, down to the year 1839. In the latter year the company ceased to use that portion of the railway which lay between Stanhope and Carr House, being a distance of eleven miles or thereabouts (herein called "the upper part of the railway"), but down to the year 1842 continued to use

K

that portion of the railway which lay between Carr House and the River Tyne (herein called "the lower part of the railway.")

5. On the 5th of February, 1841, the company, having become embarrassed, was under the powers of the deed of settlement dissolved, and on 13th of May, 1842, an Act was passed (5 Vict. s. 2. c. xxvii.)

The case then set out several sections of this Act, by which a company called the "Pontop and South Shields Railway" was incorporated and the "upper part of the railway," vested in this company, which took powers to purchase the land over which the line of railway passed, and it was declared that nothing in the Act should exempt "the lower part of the railway" from the provisions of any future general Act relating to railways. In 1844 another Act (7 Vict. c. xxvi.) was passed whereby the Pontop and South Shields Railway Company were empowered to widen a part of their railway and to purchase lands for that purpose, and in pursuance of this and the preceding Act, the company, from 1842 to 1846, kept open and regulated the lower part of the railway, and the staiths and works, and widened "the lower part of the railway." By later Acts both "the lower part of the railway" and "the upper part of the railway" were vested in the appellants, and from the dates 1841 and 1842, respectively, they have been worked and used for public traffic under the provisions of the several Acts relating thereto, and subject to such provisions of the general statutes for regulating railways as are applicable thereto.

27. In the year 1866 the Local Government Act, 1858 (1), was applied to the

(1) By the Local Government Act 1858 (21 & 22 Vict. c. 98), s. 55:—The general district rates shall be made and levied upon the occupier of all such kinds of property as by the laws in force for the time being are or may be assessable to any rate for the relief of the poor, and shall be assessed upon the full nett annual value of such property ascertained by the rate (if any) for the relief of the poor, made next before the making of the assessments under this Act, subject, however, to the following exceptions, regulations, and conditions. . . . The owner of any tithes, or of any tithe commutation, rentcharge, or the occupier of any land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or

district of Leadgate, and on the 27th of December, 1867, the Local Board for that district made an assessment for a General District Rate upon the occupiers and other parties liable by law to be assessed thereto.

28. Parts of "the upper part of the railway," and of "the lower part of the railway," and used only as railways are within the district of Leadgate.

29. In pursuance of the powers contained in the Acts of Parliament hereinbefore mentioned, the lands upon which "the upper part of the railway" was constructed, by virtue of agreements for wayleaves, have by various purchases by private contract become vested in the appellants. These lands are exclusively used for the purposes of the railway.

30. Part of the land over which "the lower part of the railway" passes in the district of Leadgate is the property of the appellants. The remainder of such land (with the exception of a portion which forms part of a highway) is held by the appellants under leases or agreements for wayleaves, as before mentioned, which have been from time to time renewed, and under which the appellants still pay half-yearly rents for the use thereof.

31. Since the time when "the upper part of the railway" and "the lower part of the railway" became vested in the Wear Valley Railway Company and the appellants respectively, as hereinbefore stated, the Wear Valley Railway Company and the Stockton and Darlington Railway Company and the appellants respectively, have expended large sums of money in widening, levelling, repairing and improving the same.

32. The appellants before and at the time of the making of the assessment, possessed and occupied within the district of Leadgate, houses used as dwelling-houses by the railway company's manager and servants, and a warehouse.

33. In the assessment the appellants were assessed, not only in respect of the

nursery grounds, and the occupier of any land covered with water, or used only as a canal or towing path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall be assessed in respect of the same in the proportion of one-fourth part only of such nett annual value thereof.

houses and warehouse, but also in respect of the parts of "the upper part of the railway" and of "the lower part of the railway" which are so within the district of Leadgate, and used only as railways, upon the full nett annual value thereof. The appellants admit their liability to be so assessed in respect of the houses and warehouse, but contend that in respect of the parts of "the upper part of the railway" and "the lower part of the railway" which are so within the district of Leadgate, and used only as railways as aforesaid, they are only liable to be assessed in the proportion of one-fourth part only of the nett annual value thereof.

The question for the opinion of the Court is whether the appellants are liable to be assessed in respect of those parts of the upper part of the railway and of the lower part of the railway which are within the district of Leadgate, and used only as railways, upon the full nett annual value thereof, in the proportion of one-fourth part, or in respect of any and what part of those parts.

*Mellish* (*Kemplay* with him) for the appellants.—"Land used only as a railway constructed under the powers of an Act of Parliament, for public conveyance," was clearly intended to comprise all lines actually worked under parliamentary powers, in whatever manner they might originally have been constructed. The Court will put a liberal construction upon the words of the exception in s. 55 of the Local Government Act, for the general design of this section is to mitigate the rates where land is *used* in a particular manner. And it is submitted that the words may be read as meaning "land used in the same manner as a railway constructed under the powers of an Act of Parliament."

*Manisty* (*Bruce* with him) for the respondents.—The railway in question was originally constructed by private agreement, and not under parliamentary powers. The liability of the appellants to be rated in respect of it cannot be affected by the provisions of Acts passed after the construction of the line. The word "constructed" is used in contradistinction to the word "used" and

must be construed in its plain and ordinary sense.

COCKBURN, C.J.—In this case I very much regret to be obliged to come to a conclusion adverse to Mr. Mellish, because I cannot suppose that the legislature intended to make a distinction between a railway constructed by a private company and afterwards brought within the provisions of an Act of Parliament, and the case of a railway constructed in the first instance under the powers of an Act of Parliament. I regret that I cannot put such a construction on the Act as I think would meet the justice and equity of the case, and I may go further and say that I have no doubt that if those who passed this Act had had the particular case in their mind they would, in all probability, have framed their language differently, and would have granted the same exemptions to a railway like the present one as they have granted to railways constructed under Acts of Parliament. The difficulty I have is this: Mr. Mellish asks us to read the words "or as a railway constructed under the powers of an Act of Parliament, for public conveyance," as if the word "constructed" was not there, and to read it thus—"or as a railway used under the powers of any Act, or public Act," which is exactly this case. This is a railway used as a railway under the powers of Acts of Parliament for public conveyance, and it is proposed that the awkward word "constructed" should be rejected, and considered as omitted. I am of opinion that this cannot be done. However it may be a subject of regret that this case should not have been provided for by the legislature, the only way in which we can read it is, that the exemption is given to land used as a railway, which railway has been constructed under the powers of Acts of Parliament, the term *used* being, I think, employed to shew that the land must be still actually used for the purpose; so that, although a railway may have been constructed under an Act, if it has fallen into disuse, as we know has been the case with several railways, the exemption will no longer apply. We cannot read it as if it were "used in the same way as a rail-

way constructed under the powers of an Act." We can only read it in the way in which I have already referred to, "used as a railway, which railway has been constructed under the powers of an Act of Parliament." I daresay this was not what the legislature meant; but I cannot find anything to justify me in striking out any of the words they have used, and reading a sentence as though they were not there. They must have been put in with some object. We must therefore decide adversely to the company.

MELLOR, J.—I am of the same opinion. We cannot read the section as Mr. Mellish desires us to do without introducing words, or rejecting the word "constructed." I do not feel at liberty to do either, however much I might be inclined to do so.

LUSH, J.—I share in the regret expressed by my Lord Chief Justice and my brother Mellor, in being obliged to put this construction upon the Act, which I cannot think that the legislature intended to put. I can only collect this intention from the language which they have used. I am bound to put a proper and reasonable construction upon every word, and I cannot read the section in any other sense than as prescribing two conditions as to the qualification of a railway to be assessed at a lower rate: it is to be used as a railway; and secondly, it must have been constructed under the powers of an Act of Parliament. I cannot adopt Mr. Mellish's view without rejecting words, or putting a strained meaning on other words, which I do not feel competent to do.

*Judgment for the respondents.*

Attorneys—Messrs. Williamson, Hill & Co., agents for Messrs. Richardson, Gutch & Co., York, for appellants; Messrs. Pattison, Wigg & Co., agents for Messrs. J. & R. S. Watson, Newcastle-upon-Tyne, for respondents.

[IN THE COURT OF QUEEN'S BENCH.]  
1870. } THE QUEEN v. THE MAYOR, &c.,  
Jan. 14. } OF WIGAN.

*Prison—Liability of Borough to contribute towards the expense of enlarging County Gaol—"Repairs, alterations, additions and improvements in or to prison"—5 & 6 Vict. c. 98. s. 18; Prison Act, 1865 (28 & 29 Vict. c. 126), ss. 8. 23. 24.*

By 5 & 6 Vict. c. 98. s. 18, a borough with a separate Court of Sessions, sending its prisoners to the county gaol without any special contract, shall pay the expense incurred in the conveyance, transport, maintenance, safe custody and care of every such prisoner, according to the time he shall remain in custody there, at the average daily cost of each prisoner according to the whole number of prisoners confined in the prison, including in such expenses all expenses of "repairs, alterations, additions and improvements in or to the prison":—Held, that any such borough is bound to contribute, in the proportion above mentioned, not only towards the cost of the necessary and ordinary repairs of the county gaol, but towards the cost of enlarging it, according to the provisions of the Prison Act, 1865 (28 & 29 Vict. c. 126).

Rule for the council of the borough of Wigan to shew cause why a mandamus should not issue directed to them, commanding them to pay to the governor of the gaol at Kirkdale the sum of 1,242l. 19s. 9d. for the conveyance, transport, safe custody and care (1) of Wigan prisoners

(1) By 5 & 6 Vict. c. 98. s. 18: "In every borough to which a separate Court of Sessions of the peace hath been or shall hereafter be granted, or purported to be granted, and where the persons committed for offences arising within such borough have been or shall hereafter be sent to any prison of the county in which such borough is situated, and no special contract shall be subsisting between such borough and county relative to the prisoners, the council of the borough shall pay or cause to be paid to the treasurer of such prison, &c., the actual expenses heretofore incurred, or hereafter to be incurred, in the conveyance, transport, maintenance, safe custody and care of every such prisoner, according to the time for which each such prisoner shall there have been or shall remain in custody there, at the average daily cost of each prisoner according to the whole number of prisoners confined in the prison, &c., including in such expenses all expenses of repairs, alterations, additions, or improvements in or to the prison."

in the gaol, from December 1, 1867, to November 30, 1868, and, if necessary, to make and levy a rate for that purpose.

It appeared from the affidavits that Wigan is a borough with a separate Court of Quarter Sessions, and between December 1st, 1867, and November 30th, 1868, sent the borough prisoners to Kirkdale gaol, a prison of the county of Lancaster, but without any special contract with the county. A presentment having been duly made at the general sessions for the county, that the prison was insufficient and inconvenient and otherwise inadequate to give effect to the rules and regulations prescribed by "The Prison Act, 1865," and that part of it was in want of repair, the justices resolved that a sum not exceeding 21,000*l.* should be granted for the purpose of enlarging the prison. By subsequent resolutions this sum was increased to 28,700*l.* In January, 1868, a letter was addressed by the Home Secretary to the county justices, calling attention to the

By the Prison Act, 1865 (28 & 29 Vict. c. 126), s. 8: "There shall be provided, at the expense of every county, riding, division, hundred, liberty, franchise, borough, &c., or other place having a separate prison jurisdiction, adequate accommodation for its prisoners in a prison or prisons constructed and regulated in such manner as to comply with the regulations of the Act in respect of prisons.

"All expenses incurred by a prison authority in carrying into effect the provisions of the Act shall be defrayed out of the county rate or rate in the nature of a county rate, borough rate, or other rate leviable, in the county, riding, division, hundred, liberty, franchise, borough, &c., or other place having a separate prison jurisdiction, and applicable to the maintenance of a prison, or out of any other property applicable to that purpose."

By section 23: "Subject to the conditions herein-after mentioned, any prison authority may alter, enlarge, or rebuild any of its prisons, or may, if necessary, build other prisons in lieu of or in addition to any subsisting prisons, and may borrow money for the purpose of such alteration, enlargement, new building, or building, &c."

By section 24: "The necessity for any alteration or enlargement, or for rebuilding of an existing prison, or for the building of a new prison, is to be proved, in the case of a municipal borough, by the certificate of the recorder, or chairman of quarter sessions where there is no recorder, and in any other case by a presentment of two or more of the visiting justices, or other justices having jurisdiction within the district of the prison authority, with the sanction of one of her Majesty's Secretaries of State."

fact that the cell accommodation of the prison was insufficient, and intimating that unless the provisions of the law were complied with in regard to the prison, proceedings would be taken to prevent any grant being made by the Treasury towards the expense of maintaining the prisoners. In compliance with this letter, and the previous resolutions, a corridor containing 132 cells, cook house, bakery, &c., also male and female hospitals and fever wards, storehouse, chief warder's house, &c., were added to the prison. Application was then made to the borough by the visiting justices of the prison for the payment of certain sums as the amount due from the borough on account of the maintenance of prisoners committed from the borough to the prison during 1868. The corporation paid the amount required, deducting the proportion charged against the borough in respect of the expenses incurred in erecting the new buildings in the prison, on the ground that this expenditure did not come within the meaning of 5 & 6 Vict. c. 98. s. 18, but ought to be defrayed out of the county rates. During the half-year ending 1868 an unusual number of prisoners were committed to the county gaol from Wigan, and consequently the proportion of expenses charged upon the corporation was greater than is usually the case, even after deducting the disputed items.

The rule above mentioned having been obtained by the county justices,

*H. Giffard* and *Baylis* shewed cause.—The corporation are not liable to contribute to the cost of enlarging the prison in the proportion contended for by the county justices. The new buildings are not "repairs, alterations, additions and improvements" within the meaning of 5 & 6 Vict. c. 98. s. 18. The words in the statute refer to necessary repairs to a properly constructed prison, and not to a reconstruction of the prison itself. The Prisons Act, 1865, requires different accommodation for prisoners, and the new buildings were constructed according to this Act, and were not necessary under 5 & 6 Vict. c. 98. The Act of 1865 does not in the absence of express enactment incorporate the provisions of the earlier Act. If the mandamus be refused, the justices may

still charge the expenses against the county as if they were making a new gaol according to the provisions of the Prison Act, 1865, s. 8. The borough would pay a fair proportion of this rate, and not a proportion based on the number of prisoners which they may happen to have had in the gaol in a particular year.

[COCKBURN, C.J.—The enlargement of the county gaol may have been caused by the increase in the number of the borough prisoners.]

The Boroughs Relief Act, 12 & 13 Vict. c. 82, s. 1, shews that it was not the intention of the legislature that a borough like Wigan should contribute towards the construction of the county gaol. The accidental fact that the borough prisoners during 1868 were above the average in numbers proves the injustice of the method contended for by the county justices.

[LUSH, J.—The Act 5 & 6 Vict. c. 98, enables you to participate in the earnings of all the prisoners in the gaol.]

The expenses caused by the borough prisoners are not of a permanent nature.

*Holker and Gorst*, in support of the rule, were not heard.

COCKBURN, C.J.—I am of opinion that this rule should be made absolute. I have no doubt that the additions to the prison come within the words "repairs, alterations, additions and improvements in or to the prison," in 5 & 6 Vict. c. 98, s. 18. It was the intention of the legislature that boroughs or divisions should contribute to such of the prison expenses as might reasonably be caused by the admission of prisoners from every such borough or division, and that the amount should be regulated by the number of prisoners. It may be that owing to the unusually large number of prisoners which are sent by a borough in a single year there may be occasionally some hardship. But the only question for us is, whether these charges are within the words of the statute. I have no doubt that they are.

BLACKBURN, J.—I am of the same opinion. I see no reason why these expenses should be charged on the county rate. It may very possibly happen, as pointed out by the counsel for the borough, that there may be an unusual number of prisoners

in a particular year, and this may be a good equitable reason for the justices to spread the expenditure over a number of years. But this does not affect the construction of the statute.

MELLOR, J., and LUSH, J., concurred.

*Rule absolute.*

Attorneys—Messrs. Sharpe, Parkers & Pritchard, agents for Mr. M. W. Peace, Wigan, for the prosecution; Messrs. Ridsdale & Craddock, agents for Messrs. Birchall & Co., Preston, for defendants.

[IN THE COURT OF EXCHEQUER.]

1870. }

Jan. 21. }

THE QUEEN v. EAVES.

*Excise—Notice of Appeal*—7 & 8 Geo. 4. c. 53, ss. 61, 83—*Notice of Hearing*—4 Vict. c. 20, s. 30.

*Service in Court of notice of appeal against an adjudication under the Excise Act (7 & 8 Geo. 4. c. 53) upon the clerk to the justices in their presence is a good service on the justices themselves.*

*Service of the notice of the time for hearing the appeal on a clerk in the office of excise is not a good service under 4 Vict. c. 20, s. 30, that section requiring service to be made on the person laying the information.*

CASE stated by the Recorder of Liverpool under the Excise Act, 7 & 8 Geo. 4. c. 53, s. 84.

The appellant, David Eaves, was on the 15th of June, 1861, convicted by two justices of the borough of Liverpool, on the information of Benjamin Evans, an officer of excise, in a penalty of 100*l.*, for being concerned in the removal, deposit and concealment of a quantity of excisable goods, contrary to 7 & 8 Geo. 4. c. 53.

Immediately on the conviction being pronounced, the appellant's counsel stated verbally in Court that the appellant would appeal against the conviction. About the same time the attorney for the appellant served on the clerk to the magistrates for the borough a notice of appeal to the quarter sessions, the clerk and the convicting justices being then in Court; and he also handed to Evans's attorney a copy of the notice, Evans himself being present at the hearing.



Evans's attorney immediately handed back the notice, stating that he declined to accept it.

On the 17th of June the appellant's attorney deposited 100*l.* with the collector of excise in Liverpool, and served a notice of appeal on a clerk in the office of the clerk of the peace for the borough.

On the 5th of July the appellant's attorney caused to be served a notice of the hearing of the appeal on clerks at the respective places of business of the convicting magistrates, and also caused a similar notice to be left at the *Excise Office* in the borough of Liverpool, with a clerk there.

At the hearing of the appeal, the respondent contended that the notices of appeal and of hearing were insufficient, whereupon this case was stated.

The question for the Court was whether the appellant had given the notices and complied with the preliminaries necessary to legally entitle him to have the appeal heard.

The following are the enactments bearing on the question :—

7 & 8 Geo. 4. c. 53. s. 83, "No appeal shall be allowed unless the party or parties appealing shall, at and immediately upon the giving of the judgment appealed against, give notice in writing of such appeal to the Commissioners of Excise or justices of the peace respectively, from whose judgment such appeal shall be made, and also to the adverse party or parties on such appeal, and shall lodge such notice at the office or with the registrar of the Commissioners of Appeal, or with the clerk of the peace for the justices of the peace at such general quarter sessions respectively, by and before whom such appeal is to be finally adjudged and determined; and no such appeal as aforesaid shall be heard unless the party or parties appellant on such appeal shall within one week at least before such appeal is to be finally adjudged and determined, give notice in writing to the adverse party or parties on such appeal of the time and place when such appeal is to be heard,"—provided that when the judgment appealed from shall be a conviction in any penalty, the amount thereof shall be deposited in the hands

of the Commissioners or collector of excise.

Section 61 of the same statute provides that no information for penalties can be exhibited except by order of the Commissioners of Excise.

4 & 5 Will. 4. c. 51. s. 28, enables such penalties to be sued for by order of the Commissioners of excise, and in the name of an officer of excise.

4 Vict. c. 20. s. 30, enacts "that the notice of the time and place when and where any appeal to the Barons of the Exchequer or to the justices assembled at quarter sessions is to be heard, shall be given on the part of the appellant to, or left at the place of abode of the respondent, seven clear days at least before such appeal is to be heard and determined."

*Leofric Temple*, for the appellant, contended that service in Court on the clerk to the justices in their presence was service on the justices themselves; and that the service of the notice of hearing at the excise office was a service on the Excise Commissioners, who were really the prosecutors, the nominal prosecutor acting in his own name by their order (7 & 8 Geo. 4. c. 53. s. 61, and 4 & 5 Will. 4. c. 51. s. 28).

*Charles Russell*, the *Attorney-General*, the *Solicitor-General*, and *Locke* with him, for the respondent, contended that the justices must be personally served; and that the words "*at the place of abode of the respondent*," in 4 Vict. c. 20. s. 30, shewed that the *actual* respondent was intended to be served, and that it was not sufficient to serve a clerk at the Excise Office.

THE COURT (1) were of opinion that the service in Court of the notice of appeal on the magistrates' clerk was good, as service on the magistrates; but that the service of the notice of hearing on the clerk in the Excise Office was not good service on the adverse party or the respondent.

*Case remitted.*

Attorneys—Messrs. Vizard, Crowder & Co., agents for Messrs. Tebay & Lynch, Liverpool, for appellant; Solicitor to the Treasury, for respondent.

(1) Kelly, C.B., Martin, B., and Pigott, B.

[IN THE COURT OF QUEEN'S BENCH.]  
 1870. } FOSTER, appellant, TUCKER, re-  
 Feb. 14. } spondent.

*Turnpike Toll—Manure carried by Dealer*  
*—Exemption—5 & 6 Will. 4. c. 18. s. 1.*

*Under 5 & 6 Will. 4. c. 18. s. 1, which provides that no turnpike toll shall be demanded in respect of any horse or carriage conveying manure for land, artificial manure carried by the dealer to the farmer in the dealer's cart is exempt from toll.*

CASE stated by justices of Wilts, under 20 & 21 Vict. c. 43.

At a petty sessions for Salisbury, in Wilts, on the 22nd June, 1869, an information was preferred by John Tucker, the respondent, against T. Foster, the appellant, under 5 & 6 Will. 4. c. 18. s. 1 (1), charging that T. Foster, of the parish of Coombe Bissett, in Wilts, being the collector of tolls at a turnpike gate there situate, called "the Coombe Bissett gate," did demand and take of and from one Trimby the sum of 1s. as and for the toll payable for the passing through the gate of a waggon drawn by two horses, he, Trimby, being exempt from the payment thereof, and claiming such exemption by reason of the waggon and horses being employed in conveying only manure for land, contrary to the form of the statute in such case made and provided, and the appellant was convicted, the justices stating the following case.

John Rebbeck, a farmer, living at Ebbesborne, in Wilts, had ordered from Charles Prangley, a dealer in artificial manures, a load of manufactured manure, namely, superphosphate of lime, for his land.

On the 18th of June, 1869, the manure was forwarded to Rebbeck, in a waggon drawn by two horses, belonging to Prangley, and driven by his carter, Trimby. Trimby passed with such waggon and

horses, loaded with the manure, through the turnpike gate at Coombe Bissett, of which the appellant is the toll collector. The appellant demanded a toll of one shilling. Trimby claimed exemption on the ground that he was carrying the manure to Rebbeck, and on the appellant refusing to let him pass, he paid the toll.

It was contended on the part of the appellant that the manure was liable to toll, inasmuch as it was manufactured merchandise, and had not passed from the dealer's hands; that Prangley was not as such manufacturer and dealer entitled to any exemption from toll.

The justices being of opinion that it was manure for land, which was exempt from toll when on its carriage to land, whether carried by the owner of the land or the person of whom it was purchased, gave their determination against the appellant. The question for the opinion of the Court is, whether imported or artificial manure, being conveyed to the farmer by the manufacturer and seller, is exempt from toll.

*De Rutzen*, for the appellant.—It is admitted that the case of *The Queen v. Freke* (2), a decision upon the construction of a local act, and that of *Pratt v. Brown* (3), are in favour of the view that these goods were exempt from toll. But it is submitted that the exception ought only to apply to those who are about to use the manure and not to those who sell it.

*Snowden*, for the respondent, was not heard.

LUSH, J.—We need not trouble the counsel for the respondent. The words of the exemption are general. The case expressly states that superphosphate of lime is manure, and the decisions shew that it is immaterial whether the article is being carried for the dealer or the person who is going to use it.

*Judgment for the respondent.*

Attorneys—Messrs. Sandys & Knott, agents for Messrs. Johns & Trail, Blandford, for appellant; Messrs. Venning, Robins, & Venning, agents for Messrs. Cobb & Smith, Salisbury, for respondent.

(2) 5 E. & B. 944; s. c. 25 Law J. Rep. (N.S.) M.C. 64.

(3) 8 Car. & P. 244.

(1) Which provides that from and after the 1st of January, 1836, no toll shall be demanded or taken on any turnpike road for or in respect of any horse, beast, cattle, or carriage when employed in carrying any dung, soil, compost, or manure for land (save and except lime), and the necessary implements used for filling the manure, and the cloth that may have been used for covering any hay, clover, or straw which may have been conveyed.

[IN THE COURT OF QUEEN'S BENCH.]

1870. }

Jan. 31. }

THE QUEEN v. PRATT.

*Debtor and Creditor—Imprisonment for Nonpayment of Costs on Appeal to Quarter Sessions*—“*Sum of Money Recoverable Summarily before a Justice of the Peace*”—*New Debtors Act* (32 & 33 Vict. c. 62), s. 4. sub s. 2—11 & 12 Vict. c. 43. s. 27—12 & 13 Vict. c. 45. s. 5.

By the *Debtors Act*, 1869, Part 1, imprisonment for debt is abolished, but there is excepted from the enactment, first, default in payment of a penalty, &c.; secondly, default in payment of any sum recoverable summarily before a justice or justices of the peace. By 12 & 13 Vict. c. 45. s. 5, upon any appeal to sessions the Court may order the party against whom the same shall be decided to pay costs, such costs to be recoverable in the manner pointed out by s. 27 of 11 & 12 Vict. c. 43. By the latter section, if the statute give costs and the sessions order them, the order must direct them to be paid to the clerk of the peace, &c., and if they are not paid, the clerk of the peace is to grant a certificate to that effect, and upon production thereof to a justice, a warrant of distress may issue, and in default of distress, a warrant for commitment to prison.

Upon appeal to quarter sessions against an affiliation order, the order was quashed, with costs, and the respondent, in default of distress, committed to prison:—Held, that as the word “recoverable” was used by the Act 12 & 13 Vict. c. 45, in alluding to the proceedings under 11 & 12 Vict. c. 43. s. 27, for enforcing the payment of costs, the right to these costs must be taken to be a right to a sum of money recoverable summarily before a justice of the peace, within the exception in the *Debtors Act*, and the respondent was therefore not protected from imprisonment.

Rule calling on the Rev. G. H. Pratt to shew cause why a *habeas corpus* should not issue directed to the keeper of the house of correction at Spilsby, in Lincolnshire, commanding him to have the body of Isabella Cole before the Court, &c.

It appeared from the affidavits that an order had been made by borough magistrates of Louth for the maintenance by

the Rev. G. H. Pratt of a bastard child of the prisoner. Upon appeal to the quarter sessions the order was quashed, with costs, to be paid by the respondent to the deputy clerk of the peace within fourteen days. The appellant taxed the costs, and having obtained from the clerk of the peace a certificate that they had not been paid, applied to a justice of the peace for a distress warrant to levy them upon the respondent's goods, under 11 & 12 Vict. c. 43, and 12 & 13 Vict. c. 45. In default of distress the justice issued his warrant for the committal of the respondent to Spilsby gaol for the period of two months, and she was accordingly arrested, and lodged in the gaol. This rule was obtained on the ground that under the recent *Debtors Act*, 32 & 33 Vict. c. 62, the respondent was not subject to imprisonment (1).

*Digby Seymour* and *Hopwood* shewed cause.—The respondent is not entitled to be discharged from custody. First, these costs are a penalty within the meaning of s. 4 of the *Debtors Act*. The costs are awarded by virtue of 7 & 8 Vict.

(1) By the *Debtors Act*, 1869 (30 & 31 Vict. c. 62), s. 4, with the exceptions hereinafter mentioned, no person shall after the commencement of this Act be arrested or imprisoned for making default in payment of a sum of money. There shall be excepted from the operation of the above enactment—1. Default in payment of a penalty or sum in the nature of a penalty, other than a penalty in respect of any contract; 2. Default in payment of any sum recoverable summarily before a justice or justices of the peace.

By 12 & 13 Vict. c. 45. s. 6, upon any appeal to any Court of general or quarter sessions of the peace, the Court before whom the same shall be brought may, if it think fit, order and direct the party or parties against whom the same shall be decided, to pay to the other party or parties such costs and charges as may appear to such Court just and reasonable, such costs to be recoverable in the manner provided for the recovery of costs upon an appeal against an order or conviction by 11 & 12 Vict. c. 43.

By 11 & 12 Vict. c. 43, s. 18, in all cases of summary conviction, or of orders made by a justice or justices of the peace, power is given to the justice or justices making the same in his or their discretion, to award costs, which shall be specified in the conviction or order of dismissal, “and the same shall be recoverable in the same manner and under the same warrants as any penalty or sum of money adjudged to be paid in and by such conviction or order is to be recoverable; and in cases where there is no such penalty or

c. 101. s. 4, and before Baines' Act (12 & 13 Vict. c. 45) costs under an order of sessions could only be enforced by indictment—*The Queen v. Mortlock* (2). By 12 & 13 Vict. c. 45. s. 5, the quarter sessions may make an order for the payment of the costs upon an appeal, and these costs are to be *recoverable* in the manner pointed out by 11 & 12 Vict. c. 43. s. 27. By the section referred to, the order for costs upon appeal is to direct them to be paid to the clerk of the peace, and upon his certificate that they are not paid, a justice of the peace may issue a distress warrant, and in default of distress, a warrant of committal.

[COCKBURN, C.J.—Can these costs be said to be *recoverable* before a justice who only acts ministerially in issuing his warrant?]

The word "*recoverable*" is used in the same sense as *recovered*. *Bancroft v. Mitchell* (3) is an authority to shew that the proceedings for enforcing these costs are sum to be thereby recovered, then such costs shall be recoverable by distress and sale of the goods and chattels of the party."

And by section 27, after an appeal against any such conviction or order as in the Act previously mentioned shall be decided, if the same shall be decided in favour of the respondents, the justice or justices who made such conviction or order, or any other justice of the peace of the same county, riding, &c., may issue such warrant of distress or commitment as aforesaid for execution of the same, as if no such appeal had been brought; and if upon any such appeal, the Court of quarter sessions shall order either party to pay costs, such order shall direct such costs to be paid to the clerk of the peace, to be by him paid over to the party entitled to the same, &c., and if the same shall not be paid within the time limited, and the party ordered to pay the same shall not be bound by any recognizance, &c., such clerk of the peace or his deputy, upon application to the party entitled to such costs, or of any person on his behalf, shall grant to the party so applying a certificate that such costs have not been paid, and upon production of such certificate to any justice or justices of the peace for the same county, &c., it shall be lawful for him or them to enforce the payment of such costs by warrant of distress in manner aforesaid, and in default of distress, he or they may commit the party against whom such warrant shall have issued in manner hereinbefore mentioned, for any time not exceeding three calendar months, unless the amount of such costs, &c., shall be sooner paid.

(2) 7 Q.B. Rep. 459; s. c. 14 Law J. Rep. (N.S.) M.C. 153.

(3) 36 Law J. Rep. (N.S.) Q.B. 257.

in the nature of criminal process. Secondly, if not a penalty, the costs are clearly a sum of money recoverable summarily before justices, as appears from the sense in which the word "*recoverable*" is used in the two Acts—11 & 12 Vict. c. 43, and 12 & 13 Vict. c. 45.

*J. Mellor* and *Lumley* in support of the rule.—Under the order directing the respondent to pay the costs of the appeal to the Quarter Sessions, such costs were not a "*penalty*" within the meaning of the Debtors Act. *The Queen v. Berry* (4) shews that proceedings in bastardy are in the nature of a civil suit.

[The COURT intimated that the costs could not be considered as a penalty.]

Secondly, the costs are not a sum recoverable summarily before a justice or justices of the peace. The words "*recoverable summarily*" are a term of art, and apply only to cases where the justices, in the exercise of their summary powers, decide whether money shall or shall not be paid, and not where they have only to enforce payment. It is only where justices make an order for the payment of money after issuing a summons that the money can be said to be "*summarily recoverable*." Where they enforce payment of the costs awarded upon an appeal to quarter sessions, the costs are levied, not recovered, by the intervention of the magistrates. In 11 & 12 Vict. c. 43. s. 29, summary proceedings are described as being founded upon an information and summons. In the Cattle Diseases Prevention Act, 1866 (29 & 30 Vict. c. 2), s. 30, penalties under the act and the expenses are to be recovered before two justices, in manner directed by 11 & 12 Vict. c. 43, which must be by summary proceedings founded upon an information and summons.

[BLACKBURN, J.—If you will refer to 11 & 12 Vict. c. 43. s. 18, you will find that costs awarded upon a summary conviction are directed to be "*recoverable*" in the same manner and under the same warrants as any penalty or sum of money adjudged to be paid in and by such conviction or order is to be recoverable.]

The costs in question are recoverable

(4) 28 Law J. Rep. (N.S.) M.C. 86.

by the joint operation of the order of quarter sessions and the warrant of the justices enforcing the payment, and they cannot come within the words "recoverable summarily before a justice of the peace."

COCKBURN, C.J.—Everything has been said which could well be said in support of this rule, but the argument has failed to disturb the view which I had formed as to the construction of the statute. Upon the best consideration which I can give to it, I think that the case falls within the second exception in section 4 of the statute. It cannot but be admitted that costs are within the meaning of the words "default in payment of a sum of money," because otherwise costs recoverable by a defendant who has obtained judgment in a superior Court would not come within the statute; and I so far agree with the counsel in support of the rule as to think that under ordinary circumstances the enactment would apply to them. We come, therefore, to the question, Are these costs "a sum of money recoverable summarily before justices" within the meaning of the exception in the act? Now, I cannot help saying that I should be surprised if in an act manifestly intended for the abolition of imprisonment for debt, and which contains a series of exceptions, a case of this kind, where a magistrate has to exercise an important jurisdiction, should not be provided for. Then, if we look to the other Acts of Parliament to see what has been the language of the legislature in cases where the payment of costs is directed to be enforced by a process like the present one, we find that in Jervis's Act (11 & 12 Vict. c. 43. s. 18), by which justices are empowered to give costs in cases of summary convictions or orders, and in Baines' Act (12 & 13 Vict. c. 45. s. 5), which gives the power to award costs on appeals to the sessions, the same word "recoverable" is applied to the process by which the payment is enforced. It has been argued that the use of the word "summarily" after "recoverable" shews that it is only intended to describe proceedings which are commenced by information; but I cannot help thinking that what is meant is every

case where proceedings are taken before a magistrate either in his judicial or ministerial capacity for the recovery of a penalty or sum of money. Having regard to the words of the statute, and the sense in which the word "recoverable" is used in previous acts, I think that in the present case the right to imprison is not taken away. The rule must be discharged.

BLACKBURN, J.—I am of the same opinion. The respondent was committed to prison in a manner which was perfectly right and legal, unless the effect of the Act, 32 & 33 Vict. c. 62, is to take away the right of imprisoning her. This statute enacts in general terms, that, with the exceptions to be afterwards mentioned, "no person shall be arrested or imprisoned for making default in payment of a sum of money," and the question is whether this case is within the exception, "any sum recoverable summarily before a justice or justices of the peace." Now there are many cases where the payment of a sum of money may be enforced by the justices of the peace, and it has been argued that the words "recoverable summarily" apply only to those cases where there is an adjudication, after summons and hearing, that a sum of money is due. Now, although the word "recover" properly applies to a case where a magistrate has to adjudicate whether money is or is not due, yet the word "recoverable" may also apply to cases where the payment of money is enforced without the magistrate being called upon to adjudicate, as in the case of a poor rate, which is enforced by a distress warrant granted by justices whose duty is purely a ministerial one. Now I think the legislature must be taken to have been well aware in passing the Debtors' Act that there are cases where the justices, who make an order for the payment of money, may upon default themselves commit the person liable to prison, and that there are a great many cases where this power of so committing the defaulter is not given to them, but to other justices. Bearing this in remembrance, it may well be that the legislature, in abolishing the power of imprisonment for debt, might say, "We do not at present deal with any of those cases where a man may be imprisoned by justices in a

summary proceeding for default in the payment of a sum of money. Now we find in Baines' Act, that the costs upon appeal to sessions are to be "recoverable" in the same manner as in section 27 of Jervis's Act, and turning there we find that in section 18 the costs upon an order of dismissal are to be "recoverable" in the same manner as a penalty, using the word as applicable to proceedings for enforcing the payment of the costs. Therefore the legislature, in framing the exception, might very well have intended to use the word "recoverable" in the same sense as in Baines' Act, although the right to the sum of money had been previously determined before another tribunal.

LUSH, J.—I am of the same opinion. I think that this case is taken out of the operation of the Debtors Act by the second branch of section 4, as being a sum of money "recoverable summarily" before a justice of the peace. I think that these words "sum of money" were advisedly used as a substitute for the word "debt," in order to include cases which do not properly come under the description of "debt," as costs on a judgment of nonsuit or on a rule of Court, or unliquidated damages in an action of tort, cases in which a *ca. sa.* might otherwise have been issued, and the person arrested imprisoned for life. We find, therefore, that the words "sum of money" are used both in the enacting part of the section and in the exception to it, and in both instances they include costs. Then, can it be said that costs awarded by a Court of Quarter Sessions are "recoverable summarily before a justice of the peace?" Now section 5 of Baines' Act is as follows (the learned judge read the section). So that the very expression "recoverable" is used as indicating the process for enforcing the payment of the costs awarded by the quarter sessions. By section 18 of Jervis's Act the costs where the information is dismissed are to be "recoverable" in the same way as a penalty, and by sections 19 and 21 a justice, who has taken no part in making the order of dismissal, may enforce payment of the costs by a warrant of distress. By section 27 these powers are extended to costs upon appeal. Now, it is provided by Baines' Act that the costs upon an appeal,

like the present one, are to be "recoverable" in the manner pointed out in section 27 of Jervis's Act. Is there any reason why we should put the limited construction upon the words "recoverable summarily" which has been suggested, and hold that they only apply to cases where there has been an adjudication on summons? It is conceded that the costs upon the original order would come within the exception, and it would be rather extraordinary if the costs on appeal were not affected by it. *Prima facie* one would suppose that the exception applied to both cases. We ought also not to lose sight of the fact that the reasons for abolishing imprisonment for debt for an indefinite period, do not apply to an imprisonment for a limited term, which is not in the nature of an execution.

*Rule discharged.*

Attorneys—Brooksbank & Galland, agents for F. Sharpley, Louth, for respondent; Woodroffe & Plaskitt, agents for J. T. Tweed, Lincoln, for appellant.

[IN THE COURT OF QUEEN'S BENCH.]

1870. } THE QUEEN ON THE PROSECUTION OF TURNER v. PEARSON.  
Feb. 14. }

*Assault and Battery—Summary Jurisdiction—Title to Land in Question—Excess*  
—24 & 25 Vict. c. 100. s. 42 & 46.

*The power given to justices by 24 & 25 Vict. c. 100. s. 42, of summarily hearing and determining charges of assault and battery is by s. 46 ousted in any case where a question as to the title to land arises, and they cannot in such a case convict the defendant for using more violence than was necessary.*

Rule for the prosecutor to shew cause why a conviction under the hands and seals of two justices of the peace in and for the county of Derby, whereby the defendant was convicted for unlawfully assaulting one Turner, should not be quashed.

It appeared from the affidavits in support of the motion to quash the conviction

tion, that the defendant was summoned under 24 & 25 Vict. c. 100. s. 42, for an assault on Turner, when it appeared that the defendant claimed to be the owner of a piece of land at South Wingfield in Derby, and had committed an assault on Turner in endeavouring to prevent him from asserting a right of placing bricks on the land.

The defendant's attorney appeared before the justices and offered evidence to shew that the title to the land came into question, and therefore they had no authority to hear and determine the charge according to 24 & 25 Vict. c. 100, s. 46 (1), but the justices refused to hear the evidence, and although it appeared in the cross examination of Turner that the title to the land did come into question, they proceeded with the charge and convicted the defendant, on the ground that he had used more violence than was necessary.

*Robinson, Serjt.*, shewed cause, and contended that the jurisdiction of the justices was only ousted where the assault was an act necessarily done in vindication of the title to land. In the present case, it must be taken that there was more violence than was necessary, and the conviction only applied to the excess. He cited *Re Thompson* (2).

*Bruce*, in support of the rule, was not heard.

**LUSH, J.**—I think we need not trouble the counsel in support of the motion. I am of opinion that the rule must be made absolute. It appears from the affidavits, and is not contradicted on the other side, that the assault in question was committed in the course of an assertion of title by the defendant. The prosecutor had entered upon land which the defendant claimed to be his, and the assault was

committed in an attempt to prevent him from placing bricks on the land. It appeared also that these facts were distinctly brought to the notice of the justices. That being so, I am of opinion that their jurisdiction was at an end, and that they had no power to go into the question, whether the violence was excessive or not. I think the words of the 46th section shew this beyond all doubt. The jurisdiction which the magistrates have to deal summarily with assaults is given by previous sections of the same Act. Then comes the 46th, which contains a provision, "That nothing herein contained shall authorise any justices to hear and determine any case of assault or battery in which any question shall arise as to the title to any lands, tenements, or hereditaments, or any interest therein or accruing therefrom." The words of the section are very large, and comprise every case of assault and battery in which the title to land comes into question. In all these cases the power to decide summarily is ousted. I think, therefore, the magistrates should have held their hands. We can do nothing else but reverse the conviction.

**HANNEN, J.**, concurred.

*Rule absolute.*

Attorneys—*Neal & Philpot*, agents for *Wilson & Burkinshaw*, Alfreton, for prosecutor; *Aldridge & Thorn*, agents for *Richards & Son*, Alfreton, for defendant.

[IN THE COURT OF QUEEN'S BENCH.]

1870. } **BERRY**, appellant, v. **HENDERSON**,  
Feb. 14. } respondent.

*Sale of Poisons—Medicine—Person to whom Sold or Delivered*—31 & 32 Vict. c. 121. s. 17; 32 & 33 Vict. c. 117. s. 3.

*By the Pharmacy Act 1868* (31 & 32 Vict. c. 121. s. 17), "it shall be unlawful to sell any poison, either by wholesale or by retail, unless the box, bottle, vessel, wrapper, or cover in which such poison be contained be distinctly labelled with the name of the article and the word 'poison,' and with the name and address of the seller of the poison; and it shall be unlawful to sell any

(1) By 24 & 25 Vict. c. 100. s. 42, two justices may hear and determine a charge of unlawful assault and battery, and upon conviction may fine or imprison the offender.

By s. 46, nothing herein contained shall authorise any justices to hear and determine any case of assault and battery in which any question shall arise as to the title to any lands, tenements, or hereditaments, or any interest therein, or accruing therefrom.

(2) 6 Hurl. & N. 193; s. c. 30 Law J. Rep. (n.s.) M.C. 19.

poison mentioned in the first part of schedule A to the Act (among which is prussic acid), to any person unknown to the seller, &c., and any person selling poison otherwise than is herein provided shall, upon a summary conviction before two justices of the peace, be liable to a penalty not exceeding five pounds for the first offence; and for the purposes of the section the person on whose behalf any sale is made by any apprentice or servant, shall be deemed to be the seller, but the provisions of the section are not to apply to any medicine supplied by a legally qualified apothecary to his patient, nor apply to any article when forming part of the ingredients of any medicine when dispensed by a person registered under the Act, provided such medicine be labelled in the manner aforesaid with the name and address of the seller, and the ingredients thereof be entered, with the name of the person to whom it is sold or delivered, in a book to be kept by the seller for that purpose."

The appellant, a duly registered chemist, was convicted under this section for selling poison to a person unknown to him. It was proved that one J., who was unknown to the appellant, came into his shop and produced a prescription written in the abbreviated form usual among chemists. At the foot of it were the initials R. M. L. and the words Mrs. Newton, Aug. 11, 1869. There was a legally qualified medical practitioner having the initials R. M. L. The appellant's assistant dispensed the prescription by putting a small quantity of prussic acid into a bottle and filling up the bottle with rose water, according to the meaning of the prescription. The appellant made an entry in his prescription book, Newton, Mrs. (copying the prescription), Aug. 11, R. M. L. He also indexed the entry by inserting the name "Newton" and the page in the index contained in the book. The bottle was labelled with the name and address of the appellant but not with the word "poison." The prescription was one which might be ordered for a lotion. No evidence was given as to whether there was such a person as Mrs. Newton or not. The appellant was also convicted in respect of the same sale for selling poison in a bottle not labelled with the word "poison."

Held, first, that, assuming that the appellant bona fide believed that he was dis-

persing a prescription given by a medical man to Mrs. Newton, that he could not be convicted for selling poison to a person unknown to him, but must be taken to have dispensed a medicine according to the requirements of the proviso to s. 17. Secondly, that he could not be twice convicted under the same section in respect of the same sale.

CASE stated by Justices of Sussex under 20 & 21 Vict. c. 43.

1. At a petty sessions holden at Worthing, Sussex, on the 18th of August, 1869, an information was preferred under section 17 of the Pharmacy Act, 1868 (1),

(1) By the Pharmacy Act, 1868, 31 & 32 Vict. c. 121. s. 17, "It shall be unlawful to sell any poison, either by wholesale or by retail, unless the box, bottle, vessel, wrapper, or cover in which such poison is contained, be distinctly labelled with the name of the article and the word 'poison,' and with the name and address of the seller of the poison; and it shall be unlawful to sell any poison of those which are in the first part of schedule A to this Act (among which is prussic acid) or may hereafter be added thereto under section 2 of this Act, to any person unknown to the seller, unless introduced by some person known to the seller; and on every sale of any such article, the seller shall, before delivery, make or cause to be made an entry in a book to be kept for that purpose, stating, in the form set forth in schedule F to this Act, the date of the sale, the name and address of the purchaser, the name and quantity of the article sold, and the purpose for which it is stated by the purchaser to be required, to which entry the signature of the purchaser, and of the person, if any, who introduced him, shall be affixed; and any person selling poison otherwise than is herein provided, shall, upon a summary conviction before two justices of the peace in England, be liable to a penalty not exceeding five pounds for the first offence, and to a penalty not exceeding ten pounds for the second or any subsequent offence; and for the purposes of this section, the person on whose behalf any sale is made by any apprentice or servant, shall be deemed to be the seller; but the provisions of this section, which are solely applicable to poisons in the first part of the schedule A to this Act, or which require that the label shall contain the name and address of the seller, shall not apply to articles to be exported from Great Britain by wholesale dealers, nor to sales by wholesale to retail dealers in the ordinary course of wholesale dealing; nor shall any of the provisions of this section apply to any medicine supplied by a legally qualified apothecary to his patient, nor apply to any article when forming part of the ingredients of any medicine dispensed by a person registered under this Act, provided such medicine be labelled in the manner aforesaid with the name and address of the seller, and the ingredients



by L. B. Henderson (the respondent), an inspector of police, against Henry Berry (the appellant), a pharmaceutical chemist duly registered under the Pharmacy Act, 1868, charging that the appellant on the 11th of August, 1869, at Worthing, did unlawfully sell a certain poison, to wit, prussic acid, by retail, the bottle in which such poison was contained not being labelled with the word poison.

2. The following facts were proved or admitted.

3. On the 11th of August, 1869, one Ansell Johnson came into the shop of the appellant, the appellant and his assistant being there, and asked to have made up a prescription which was written in pencil and is as follows:—

Ry Acid : Hydrocyan : Scheel's, 3 ij.

Aq : Rosa, 3 ij.

M. ft. lotio.

Ter die applic :

R. M. L.

Mrs. Newton,  
August 11th, 1869.

The original of this prescription is to be taken to form part of this case.

4. The meaning of the name "Mrs. Newton" in the prescription was that the prescription was for the use of Mrs. Newton. There is a legally qualified medical practitioner having the initials "R. M. L."

5. The appellant's assistant dispensed the prescription by putting two drachms of hydrocyanic acid into a two ounce bottle and filling up the bottle with rose-water according to the meaning of the prescription.

6. The appellant made the following entry in his prescription book :  
Newton, Mrs.

R. acid, Hydrocyan. Scheel's, 3 ij.

thereof be entered, with the name of the person to whom it is sold or delivered, in a book to be kept by the seller for that purpose."

By the Pharmacy Act Amendment Act, 32 & 33 Vict. c. 117. s. 3, nothing in 31 & 32 Vict. c. 121. s. 17, is to apply to any medicine supplied by a legally qualified medical practitioner to his patient, or dispensed by any person registered under the Act, provided such medicine be distinctly labelled with the name and address of the seller, and the ingredients thereof be entered, with the name of the person to whom it is sold or delivered, in a book to be kept by the seller for that purpose.

Aq. Rosæ, ad., 3 ij.

M. ft. lotio.

Ter die applicand.

R. M. L.

August 11.

He also indexed the entry by inserting the name "Newton" and the page in the index contained in the book.

7. The prescription book is a book in which the appellant copies all prescriptions he makes up. This book is to be taken to form part of this case.

8. Ansell Johnson paid the appellant's claim and took the bottle and its contents away.

9. The bottle was labelled as follows :

Caution. For external use ;

The lotion to be used three times a day.

Mrs. Newton.

H. Berry, Dispensing Chemist,  
Member of the Pharmaceutical Society,  
68 Montague Street, Worthing.

The bottle was not labelled poison. The bottle and the label thereon are to be taken to form part of this case.

10. Hydrocyanic acid, Scheel's, is prussic acid. The prescription is one that might be ordered for a lotion. Rose water by itself is not a medicine.

11. No evidence was given that there was or was not any such person as Mrs. Newton. Ansell Johnson, a witness for the prosecution, refused to answer the two questions—Did he buy it for Mrs. Newton? Did he buy it for himself?—on the ground that by answering he might tend to criminate himself on a charge of attempting to commit suicide, on which he at the time stood remanded.

12. The appellant had been convicted in respect of the same sale of selling poison to a person unknown to him.

13. The Pharmacy Act, 1869, received the royal assent on the day of the alleged offence.

14. The following points were raised on behalf of the appellant:—

15. That the appellant had not sold a poison within the meaning of the Pharmacy Act, 1868, but that the appellant being a person registered under that Act, had dispensed a medicine, and that the appellant had complied with the provisions of the Pharmacy Act, 1868.

16. That if the appellant had sold a poison it was an article forming part of the ingredients of a medicine, and that the proviso forming the end of the section had been complied with.

17. That the appellant could not have committed two offences by one act, and that he could not therefore be convicted for this offence.

18. The following points were raised on behalf of the respondent :—

19. That the thing sold was not a medicine, but a poison partially diluted.

20. That the name "Mrs. Newton" entered by the appellant was not the name of the person to whom the article was sold or delivered, but only the name of a person for whose use it was alleged to be required.

21. That the book in which the entry was made was not a book kept for that purpose, inasmuch as it was kept for the purpose of copying therein prescriptions of all sorts.

22. That if by one act two laws were broken, two punishments might follow.

23. The justices adjourned the further consideration of the matter until the 25th of August, 1869.

24. On the last-mentioned day they convicted the appellant of the offence, and adjudged him to forfeit and pay the sum of 10s., to be paid and applied according to law, and also to pay to the respondent the sum of 1l. 1s. for his costs.

25. The appellant being dissatisfied with the decision applied to the justices to state this case.

26. The questions of law are :—

27. Whether a mixture of prussic acid and rose water is a poison within the meaning of s. 17 of the Pharmacy Act, 1868.

28. Whether a mixture of prussic acid and rose water, when dispensed by a person registered under the Pharmacy Act, 1868, is a medicine within the meaning of s. 17 of that Act.

29. Whether, according to the facts before stated, the appellant complied with the requirements of the proviso at the end of the 17th section of the Pharmacy Act, 1868.

30. Whether a man can be twice convicted for one act.

31. Whether, upon the facts herein stated, and the law applicable thereto, the appellant was properly convicted.

*Quain (Bullock with him)* for the appellant.—A question has arisen whether the later Act, 32 & 33 Vict. c. 117, which received the royal assent on the very day on which the conviction took place, applies to the present case. But the appellant has no wish to raise this point, as the words of 31 & 32 Vict. c. 121. s. 17, under which the conviction took place, are sufficient to shew that he was improperly convicted. The first question is whether the article sold to Johnson was a medicine within the meaning of the proviso to the section.

[HANNEN, J.—Was the bottle labelled in the manner required by the Act?]

It is not necessary that it should be labelled "poison," "labelled in the manner aforesaid" means labelled with the name and address of the seller, and it was so labelled. It is stated that the prescription is one which might be ordered for a lotion, that is, a medicine composed for the purpose of being applied externally. The term medicine is applied to a thing used externally as well as internally.

[LUSH, J.—The proviso might have been necessary in order to apply to medicine which contained a very small proportion of prussic acid, so that the whole compound was not poisonous. But suppose the thing sent out is essentially a poison, how is that protected by the proviso?]

Whether the article is a poison or a medicine depends upon the patient for whom it is prescribed. The moment a prescription, written in the ordinary form, and professing to be written by a duly qualified medical man, is brought to a chemist, and the chemist, acting in good faith, puts up the ingredients, and inserts the name of the person to whom he professes to sell the prescription in a book kept for the purpose, he brings himself within the proviso. It would be very inexpedient to require that ordinary medicines should be labelled with the word "poison." The statute in the case of a medicine does not require the name and address of the buyer to be entered in the chemist's book, but only the name of the person for whom it appears to be intended. The later Act,

32 & 33 Vict. c. 117, was only passed to extend the operation of section 17 of the preceding Act to legally qualified medical practitioners, but any doubt as to the construction of this section with regard to the labelling which is required is removed by the words of 32 & 33 Vict. c. 117. s. 3, "distinctly labelled with the name and address of the seller." Lastly, it cannot be seriously contended that the appellant can be convicted in two distinct penalties for the same offence.

*Lumley Smith*, for the respondent.—The case is not within the proviso to 31 & 32 Vict. c. 121. s. 17. The object of the statute was twofold: to prevent poisons being obtained for improper purposes, and to preserve evidence of the person to whom the poison was supplied by the chemist. The mixture sold by the appellant was a poison within the meaning of the first part of the section, for prussic acid is a poison, although it be diluted with water. The proviso was only intended to apply to medicines for internal use, in which a very small quantity of poison may be introduced. No mixture can be a medicine within the meaning of the Act unless it has medicinal ingredients. The word "medicine" applies only to mixtures where one ingredient corrects the other, and not to a mere dilution of poison. The next question is whether a proper entry of the transaction was made, and it is submitted that the appellant ought to have produced affirmative proof that "Mrs. Newton" was an existing person.

[LUSH, J.—Must we not take it that the appellant *bona fide* believed that this was a prescription for a lotion intended for Mrs. Newton?]

*Bona fide* belief does not affect the question, as is shewn by the words making the chemist or druggist liable for the act of his apprentice or servant. Further, it is not enough that there is a physician whose initials are the same as those written on the prescription.

[LUSH, J.—To require the appellant to prove that some physician bearing these initials, did in fact write the prescription, would place a great difficulty in the way of chemists.]

In the next place the name of "Mrs. Newton" entered in the book was not the name of the person to whom the mixture was sold or delivered. It was delivered to Johnson. The prescription ought also to have been entered, not in the ordinary prescription book, but in a book kept for the purpose. With regard to the double conviction there have been two different infractions of the law.

[LUSH, J.—No matter how far the offender deviates from the statute, the statute only renders him liable to one penalty for each act.]

*Quain*, in reply.—It was for the prosecution to shew that the appellant did not *bona fide* believe that Mrs. Newton was the person to whom the medicine was sold. (It was thereupon agreed that the Court should be at liberty to draw inferences of fact from the case.)

LUSH, J.—Then I think we need not trouble you further, Mr. Quain. Assuming that we are to draw inferences, and taking the case as if it stood as the finding of the magistrates, in point of fact, that this gentleman did really believe that when he was dispensing this prescription he was making up a prescription which had been actually given by a medical man to Mrs. Newton for a lotion, as it purported to be, I am of opinion, that he has brought himself within the proviso. The first part of the 31 & 32 Vict. c. 121. s. 17, the enacting part, applies to the sale of poisons, and amongst the enumerated poisons is prussic acid. I observe that the Act seems to allude to poisons as being sold in their simple state, or in one form of preparation. It does not appear to contemplate their being mixed up with any other ingredients; they must be pure and simple. Then comes the proviso. Taking the general sweeping words of the enactment, they would, perhaps, have prohibited any medical man dispensing a prescription that contained a poison. It was supposed this might be so, in all probability; and then comes the proviso, which says, that nothing in the Act contained shall "apply to any medicine supplied by a legally qualified apothecary to his patient, nor apply to any article when forming part of the ingredients of any medicine dispensed by a person registered

M

under this Act." Is this a medicine? That is not disputed. The word "medicine" is comprehensive enough to embrace everything which is to be applied medicinally, whether externally or internally. According to the prescription, this was intended to be used as a lotion, and the case states as a fact, that the prescription was one which might be proper for a lotion. The proviso seems to put upon the same footing, in this respect, a duly qualified medical man, supplying this thing to his patient, and a registered chemist and druggist dispensing such a thing. If a duly qualified medical man had actually supplied, and himself delivered, to his patient this compound of prussic acid and rosewater as a lotion, then he would be protected under the first part of the proviso. That being so, I think the same rules apply to a registered chemist and druggist making up that compound from a prescription, which, as I understand, is the making up something that is prescribed, and making it with directions how it is to be used. Then, did this prussic acid form part of the ingredients of a *medicine* dispensed by a duly registered person? It struck me, on first reading the section, that the word applied only to cases where the poisonous article is one of several ingredients, where, perhaps, its poisonous qualities are qualified in a more or less degree by the other ingredients; but then, I think, it would be very difficult to apply the Act with that interpretation of it. We cannot enter into the consideration whether the other ingredients are fewer or greater in number, or in what proportion they may be. This is of itself a compound, and is a medicine which might have been ordered by a medical man to be used as a lotion. Then, has he complied with the remaining part of the section, which requires that the medicine "should be labelled in the manner aforesaid?" by which I understand, "labelled distinctly and legibly with the name and address of the seller," as stated in the section; and that the ingredients thereof be entered, with the name of the person to whom it is sold or delivered, in a book to be kept by the seller for that purpose. It is found that the ingredients were entered in what he called his prescription-book, which, I

think, satisfies the requirements of the Act, as a book kept for that purpose, a book kept for entering such medicines or prescriptions. Then he has entered, as the person to whom it was sold, Mrs. Newton. The statute, by saying the name of the person to whom it was sold, or for whom it was delivered, has, I think, meant to give him the option of putting down the name of the person to whom he actually gave it over the counter, or the name of the person whose agent that person was, and for whose use it was intended. Taking the fact to be found, that he reasonably believed that this mixture was duly prescribed for Mrs. Newton, Mrs. Newton must be taken to be the person to whom he sold it, and, therefore, he complied with the provisions of the Act. For these reasons, I think, the conviction was wrong.

HANNEN, J.—I am of the same opinion. I think we are able to pronounce our judgment upon the assumption which has been made, that it is to be taken that the magistrates would have found that the chemist in this case acted *bona fide*, believing that Mrs. Newton was the person to whom the medicine was sold. Without that, I should have thought it necessary that there should be a further inquiry, but upon that assumption I think we shall be putting a construction upon the Act which will not lead to the dangerous consequences which have been suggested, because it will only be where a chemist establishes that he has entered the name of the person to whom he delivers the medicine, or to the person to whom it shall be found he reasonably believed he had sold it, that he brings himself within the terms of this proviso.

*Conviction quashed.*

---

Attorneys—Flux, Argles & Rawlins, for appellant; H. S. Willett, agent for M. Green, Worthing, for respondent.

---

[CROWN CASE RESERVED.]

1870. }  
 Jan. 22. } THE QUEEN v. WYATT.\*

*Pleading — Indictment — Aiding and Abetting a Felony—Aiding in Attempt—*  
 14 & 15 Vict. c. 100. s. 9—*Rape.*

*An indictment against H. and W. charged H. with rape, and W. with aiding and abetting the said rape. They were found not guilty of the felony, but the jury found H. guilty of attempting to commit the rape charged, and W. of aiding and abetting H. in the attempt:—Held, that H. was rightly convicted of misdemeanour.*

CASE reserved by Pigott, B.

The prisoners were tried before me at the last Winter Assize at Taunton, upon an indictment which charged the prisoner Hapgood with rape, and the prisoner Wyatt with aiding and abetting in the above rape.

The jury acquitted both prisoners of the felonies charged, but found them both guilty of misdemeanour — Hapgood of attempting to commit the rape, and Wyatt of aiding Hapgood in the attempt. The prisoner Wyatt's counsel submitted that this finding amounted to acquittal of Wyatt altogether, inasmuch as the case was not within the Statute 14 & 15 Vict. c. 100. s. 9 (1). I overruled the objection, and passed judgment upon him; but, at

\* Coram Cockburn, C.J., Byles, J., Keating, J., Pigott, B., and Cleasby, B.

(1) The 14 & 15 Vict. c. 100. s. 9. enacts—And whereas offenders often escape conviction by reason that such persons ought to have been charged with attempting to commit offences, and not with the actual commission thereof: For remedy thereof be it enacted that if, on the trial of any person charged with any felony or misdemeanour, it shall appear to the jury upon the evidence that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict, that the defendant is not guilty of the felony or misdemeanour charged, but is guilty of an attempt to commit the same, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment of attempting to commit the particular felony or misdemeanour charged in the said indictment; and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the felony or misdemeanour for which he was so tried.

the request of the defendant Wyatt's counsel, I reserved the point for this Court.

The question is, whether Wyatt was properly convicted of misdemeanour?

No counsel appeared.

*Per Curiam.*—The conviction was right.  
*Conviction affirmed.*

[IN THE COURT OF QUEEN'S BENCH.]

1870. {  
 April 30. { THE QUEEN v. THE GUARDIANS OF  
                   THE POOR OF THE ST. THOMAS'  
                   POOR LAW UNION, IN THE  
                   COUNTY OF DEVON.

*Poor Law—Settlement—Public Tax or Levy—*3 Will. & M. c. 11. s. 6—*Improvement Rate and Lamp Rate.*

*Under an Improvement Act for the city of E., authority was given to levy certain Improvement and Lamp Rates. Commissioners were appointed under the Act, who were empowered to rate and assess, by a just and equitable ground rate, the several land-owners and owners, and the several tenants and occupiers of all houses, &c., within the city. Power was given to the commissioners to appoint two or more of the inhabitants of the city or of each parish, &c., within it, to be assessors of the rates, and they were required to make such rates, and to deliver copies thereof to the commissioners who were to settle and sign the same. The church-wardens and overseers of the poor of the respective parishes were to be the collectors of the rates.*

*T. rented a dwelling-house in the parish of S. within the city, and paid his share towards the Improvement Rate and the Lamp Rate made under the powers given by the Act:—Held, that these rates were public taxes or levies of the parish, within the meaning of stat. 3 Will. & M. c. 11. s. 6, and that T. gained a settlement in the parish of S.*

Upon appeal to the Quarter Sessions for the county of Devon, against an order of justices for the removal of Ann Tappan and her seven children, from the parish of Withycombe Raleigh, in the St. Thomas Poor-law Union in the county of Devon, to the appellants' Poor-law Union

of Exeter; the place of their last legal settlement being adjudged to be in the parish of St. Sidwell, in the city and county of the city of Exeter, in the last-mentioned union, the sessions quashed the order subject to the following:—

#### CASE.

1. The paupers, Ann Tupman and her children, were respectively the widow and legitimate children of William Henry Tupman, deceased, who died in a house occupied by himself and his family in the parish of St. Sidwell, in the city of Exeter (one of the parishes of the appellants' union), on the 1st of October, 1868. Shortly after the death of W. H. Tupman the paupers removed themselves into the respondents' union. The order of removal appealed against was made the 29th of January, 1869.

2. W. H. Tupman *bona fide* rented a tenement (viz., the house in which he died) which consisted of a separate and distinct dwelling-house in the parish of St. Sidwell, at and for a larger sum than 10*l.* a year for the term of one whole year (namely, from Michaelmas, 1867, to Michaelmas, 1868), and the house was occupied by W. H. Tupman and paupers during the whole of the year, under the yearly hiring, and the rent for the same to the amount of 10*l.* was actually paid for the term of one whole year.

3. W. H. Tupman was duly assessed to the poor rate, but did not himself pay the same in respect of the tenement for one year.

4. In the month of July, 1868, W. H. Tupman paid his share which was demanded of him, and for which he was liable, towards the Improvement Rate and the Lamp Rate levied as hereinafter stated for the parish of St. Sidwell, in respect of his occupation of the house.

5. At the trial of this appeal at the quarter sessions the Court held that W. H. Tupman did not acquire a legal settlement in the parish of St. Sidwell, on the following grounds, viz.:—

That the Improvement Rate and Lamp Rate were neither of them public taxes or levies of the town or parish in which W. H. Tupman inhabited within the meaning of the statute 3rd Will. & M. c. 11. s. 6,

nor "parochial rates" within the meaning of the statute 6 Geo. 4. c. 57. s. 2. The order of removal was therefore quashed, but the Court of Quarter Sessions granted the respondents a case, in order that this point might be decided by the Court of Queen's Bench.

6. The Improvement and Lamp Rates are distinct rates, and are levied under the authority of a local Act, 2 & 3 Will. 4. c. 106, which was passed on the 4th of July, 1832, and is entitled "An Act for better paving, lighting, watering, cleansing and otherwise improving the city of Exeter and county of the same city." This Act is to form part of this case, and the following are the sections most material to this question:—

Section 2 provides for the appointment of commissioners, to consist of six members of the common council, the dean and canons residentiary of the Cathedral, and also of persons to be elected by each parish and precinct within the city and county of the city, as provided in the 4th section.

Section 4 is in the following words:—

"And be it further enacted that the commissioners for the execution of this Act to be hereafter appointed, shall be elected by the parishioners and inhabitants of the several parishes and precincts within the city of Exeter and county of the same, and every such parish or precinct respectively shall from time to time be entitled to appoint such person or persons to be commissioners of this Act, as together with the commissioners for the time being acting for such parish or precinct respectively by virtue of the said recited Act and this Act, will make up the number of commissioners which such parish or precinct respectively shall be entitled to appoint, according to the following scale (that is to say): where the amount to which the parishioners and inhabitants of such parish or precinct respectively shall be assessed to the rates hereinafter directed to be made after such assessments shall have been approved and confirmed in manner hereinafter mentioned shall not exceed 100*l.*, such parish or precinct respectively shall be entitled to appoint one commissioner; where such amount shall exceed 100*l.* and not exceed 250*l.* such parish or precinct respectively shall be entitled to appoint

two commissioners; where such amount shall exceed 250*l.* and not exceed 400*l.* such parish or precinct respectively shall be entitled to appoint three commissioners; where such amount shall exceed 400*l.* and not exceed 600*l.* such parish or precinct respectively shall be entitled to appoint four commissioners; where such amount shall exceed 600*l.* and not exceed 800*l.* such parish or precinct respectively shall be entitled to appoint six commissioners."

Section 7. "And be it further enacted that when and so often as the inhabitants and parishioners of any of the said parishes and precincts shall be entitled as before mentioned to appoint a commissioner or commissioners, the commissioners for the time being acting in the execution of this Act shall, and they are hereby required to, cause notice in writing to be given by their clerk to the churchwardens or to any two inhabitants or parishioners of such parish or precinct, qualified to vote at the election of commissioners in manner hereinafter mentioned that a person, or two or more persons (as the case may be), is or are required to be elected, to make up the full number of commissioners which such parish or precinct is entitled to appoint, and the inhabitants or parishioners of such parish or precinct shall, within fourteen days next after the delivery of such notice, meet at the church or chapel, or in the usual place of public meetings of such parish or precinct, between the hours of ten and twelve in the forenoon, of which meeting seven days' notice shall be given by the churchwardens of such parish, or by any two inhabitants or parishioners of such parish or precinct qualified to vote as hereinafter mentioned, by affixing the same at the Guildhall of the said city, and also in the case of a parish, at the church door thereof, and at such meeting it shall be lawful for the major part of the inhabitants and parishioners to nominate and elect a person or such number of persons (as may be specified in such notice) to act as a commissioner or commissioners for such parish or precinct."

By sections 40 to 135 the commissioners are empowered to pave and light the streets of Exeter, and provide for watchmen and water pipes.

Section 136 is as follows:— And for

raising, securing and paying money to answer and defray the several purposes of this Act, and to defray the charges and expenses of soliciting, obtaining and passing this Act or a proportion thereof (other than and except for the purpose of lighting the said city and county of the same), be it enacted that the said commissioners shall, and they are hereby authorised and required, once in every year to rate and assess, by a just and equitable pound rate or assessment, under the name of the Exeter Improvement Rate, the several landowners and owners and the several tenants and occupiers of all houses, buildings, gardens, tithes and other hereditaments within the said city, in sums not exceeding certain sums therein mentioned.

Section 139. "And be it further enacted that the charges and expenses of lighting, setting up, fixing, providing, maintaining and repairing the lamps by this Act directed to be set up for the purpose of lighting the said streets, ways, passages and places, parishes, liberties, suburbs and precincts of the said city and county of the same city of Exeter, and for otherwise putting this Act into execution in any manner touching and concerning the lighting the said city and county of the same, shall be at all times borne and paid and defrayed by the tenants or occupiers of all houses, buildings, lands, tithes and other hereditaments within the city of Exeter and county of the same, and for that purpose the said commissioners shall, and they are hereby authorised and empowered and required, from time to time once in every year to rate and assess, by a just and equal pound rate or assessment, under the name of 'The Exeter Lamp Rate,' all the tenants or occupiers of all houses, buildings, lands, tithes and other hereditaments within the said city and county of the same in respect thereof" at amounts therein limited.

Section 141. "It shall be lawful for the said commissioners, as often as they shall see occasion, to appoint two or more of the inhabitants of the city and county, or of each parish, precinct or ward within the said city and county, to be assessors of such rates and assessments, and such assessors are required to make such rates

and assessments from time to time accordingly, and to deliver to the commissioners two copies of the rates and assessments, made in the manner and according to the form directed by the said commissioners and subscribed by such assessors. And the said commissioners shall, as soon as may be after such rates and assessments are made and delivered to them by such assessors, settle and sign the same, and cause a duplicate thereof, also signed by them, to be delivered to the collectors to be appointed in that behalf. A penalty of 10*l.* is imposed on persons appointed assessors and refusing to take the office, such penalty, when levied, to be paid to the treasurers or treasurer of the said commissioners to be applied to the purposes of the said Act."

Section 142. "No person, who shall have served the office, shall be compellable to serve again for three years, except with the consent of a vestry meeting of any parish in respect of which any such assessor shall be appointed."

Section 150. The commissioners are required yearly to appoint the churchwardens and overseers of the poor of the respective parishes or such other persons as the commissioners shall appoint to be collectors of the said rates and assessments, and that all the said rates shall be paid to the said collectors by the respective tenants or occupiers of houses, &c.

Section 158 enacts that in all cases where any person or persons shall come into or occupy any house, &c., rated or assessed, or liable to be rated or assessed out of, or from which any other person or persons shall have been removed, or which at the time of making such rate or assessment was empty or unoccupied, the person or persons coming in or occupying the same shall be liable to pay such rate or assessment although his, her or their name or names may not be inserted in such rate or assessment in proportion to the time that such person or persons shall occupy the same respectively, and in like manner as if such person or persons had been originally rated or assessed by name in such rate or rates, assessment or assessments, which proportions, in case of dispute, shall be settled and ascertained by the commissioners.

7. Improvement and lamp rates were from time to time made for the parish of St. Sidwell, by assessors appointed by the commissioners in pursuance of the powers given to them in that behalf by the Act, and such rates were collected by persons appointed as collectors by the commissioners by virtue of the Act.

8. The improvement rate for the parish of St. Sidwell, from Lady-day, 1867, to Lady-day, 1868, was produced in evidence, the heading to which is as follows:—

"Instructions to Assessors.

"The assessors are required to insert the Christian and surname of the owner and occupier of every property assessed.

"The assessors will make the assessment by a street list.

"Where there are two or more tenants of houses, and where houses are let for a less term than a year at or under the yearly rent of 5*l.*, the assessors will be very particular in assessing correctly the landlord of such property, who in all such cases will be liable to pay the occupier's as well as owner's proportion of the rate.

"The rate to be returned at the Guildhall, signed by the assessors, at eleven o'clock in the forenoon on the day named in the warrant, under a penalty of 10*l.*

"The collectors of the rate have instructions to give the assessors their best assistance in making the rates.

"The alterations made in the last year's assessment by appeal in your parish may be seen at the clerk's office.

"The Exeter Improvement Rate.

"A rate on the several landlords and owners, and the several tenants and occupiers, of 1*s.* in the pound on the annual rent or value of all houses, buildings, gardens, tithes, lands and hereditaments, other than and except arable, meadow or pasture ground; and of 8*d.* in the pound on the annual rent or value of all arable, meadow or pasture ground, situate within the parish of St. Sidwell, in the city and county of the city of Exeter, made in pursuance of an Act passed in the 2nd & 3rd years of the reign of King William the 4th, intituled 'An Act for better paving, watching, cleansing and otherwise improving the city of Exeter and county of the same city, for one year commencing Lady-day, 1867.'"



No. of Assessment.	Name of Occupier.	Name of Owner.	Description of Property rated.	Name or Situation of Property.	Annual Value.	Amount of Rate.	Amount actually received.		Deficiencies in collection.	
							1st Collec- tion.	2nd Collec- tion.	1st Collec- tion.	2nd Collec- tion.
1627	Damerel A.	Feoffers of St. Sidwell	House	Hampton Buildings	£ 16	s. 16	s. 4	s. 4	s. 4	s. 4

This rate was signed as follows :—

George Wilson, } Assessors.  
J. T. Brown Mason, }

Settled and signed by us,  
(Signatures of five of the Commissioners.)

9. A. Damerel was at the time the rate was made the tenant of the premises, but left during the year of rating, and was immediately succeeded in the occupation by W. H. Tupman as tenant.

#### The Lamp Rate

For the parish of St. Sidwell, from Lady-day, 1867, to Lady-day, 1868, was also produced in evidence, the heading to which was as follows :—

#### "Instructions to Assessors.

"The assessors are required to insert the Christian and surname of the owner and occupier of every property assessed.

"The assessors will make the assessment by a street list.

"The rate to be returned to the Guildhall, signed by the assessors, at eleven

o'clock in the forenoon on the day named in the warrant, under a penalty of 10*l*.

"The collectors of the rate have instructions to give the assessors their best assistance in making the rates.

"The alterations in last year's assessment by appeal in your parish may be seen at the clerk's office."

#### "The Exeter Lamp Rate.

"A rate on the several tenants or occupiers of 4*d*. in the pound on the annual rent or value of all houses, buildings, lands, tithes and other hereditaments within the parish of St. Sidwell, within the city and county of the city of Exeter, made in pursuance of an Act passed in the 2nd year of the reign of King William the 4th, intituled 'An Act for paving, lighting, watching, cleansing and otherwise improving the city of Exeter and county of the same city, for one year commencing Lady-day, 1867.'"

No. of Assessment.	Name of Occupier.	Description of Property rated.	Name or Situation of Property.	Annual Value.	Amount of Rate.	Amount actually received.		Deficiencies in collection.	
						1st Collec- tion.	2nd Collec- tion.	1st Collec- tion.	2nd Collec- tion.
1627	Damerel Aquila	House	Hampton Buildings	£ 16	s. d. 5 4	s. d. 1 4	s. d. 1 4	s. d. 1 4	s. d. 1 4

This rate was signed as follows :—

George Wilson, } Assessors.  
J. T. Brown Mason, }

Settled and signed by us,  
(Signatures of five of the Commissioners.)

11. A. Damerel was at the time the rate was made the tenant of the premises, but left during the year of rating, and was immediately succeeded in the occupation by W. H. Tupman as tenant.

12. If the Court shall be of opinion that the improvement rate, or the lamp rate, was not a public tax or levy or parochial rate, within the intent and meaning of the Statute 3 Will. & Mary, c. 11. s. 6, and Statute 6 Geo. 4. c. 57. s. 2 respectively, then the order of removal shall be quashed and the order of sessions shall stand confirmed.

*Anderson and Mackey* for the appellants.—These rates were neither “public taxes or levies” under 3 Will. & M. c. 11. s. 6, nor can they be said to be “parochial rates” within 6 Geo. 4. c. 57. s. 2, so as to confer a settlement. These rates are made by the commissioners, and all that the assessors have to do is to collect them after they are made. They are not, therefore, parish taxes, and the element of notoriety, which is essential to the gaining of a settlement in this way, is wanting, so far as the parish authorities are concerned. In *Rex v. Axemouth* (1), it was decided that the land-tax was a public tax within 3 Will. & M. c. 11. s. 6, but such a tax differs from those now in question in being an imperial tax chargeable upon the whole country instead of being a local tax charged upon the city of Exeter.

[LUSH, J.—But s. 141 of the local Act, which is set out in the Case, shews that the assessors are to make the rates, and to deliver copies to the commissioners. The persons to be appointed are to be two or more of the inhabitants of the city and county, or of each parish, &c.; and the rate is made upon the landlords, and owners, and tenants, and occupiers of houses, &c., situate within the parish.]

It is submitted that the rate is made by the commissioners; upon its face it appears to be settled and signed by them. It is like the watch-rate, which in *Rex v. Christchurch* (2), was held not to be sufficient. In that case Bayley, J., said, “The land-tax was holden to be within the Act from the notice of inhabitancy that arises by the parties having been assessed and having paid it. Payment towards a county bridge gives no settlement, because the person pays as an inhabitant of the county and not of the parish.” In *St. George’s*

*Hanover Square v. The Guardians of Cambridge Union* (3), the property-tax was held to be a sufficient public tax, but that again is an imperial tax. Reliance will be placed by the other side upon *Reg. v. Everton* (4), which was also the case of a watch-rate, but there the rate was levied by the overseers of the parish. Here any two of the inhabitants of the parish may be appointed by the commissioners to collect the rates.

[LUSH, J.—It comes to this, what is the meaning of the Act? In fact, the rate has been made for the parish.]

*Sir J. B. Karslake* (*MacKellar* with him), for the respondents.—The rates are made for the city and county, but the whole of the parish is taxed, and they are sufficiently parochial rates. The Act should be read as making an assessment for each parish. The 136th section shews that it was intended that substantially all the inhabitants should be rated. (He was then stopped.)

BLACKBURN, J.—A rate is made for the whole city, but s. 141 gives power to the commissioners to appoint as assessors two or more of the inhabitants of the city and county, or of each parish, &c. I do not think that they are bound to do so, but they certainly have the option. We will suppose that they do in fact appoint two assessors for each parish. The section then goes on to provide that the assessors are to make the rates and assessments, and to deliver to the commissioners two copies thereof, and the commissioners are to settle and sign the same. Now *reddendo singula singulis* we find that when the commissioners have appointed assessors for a parochial place, the two assessors may make the rates for the place for which they are appointed, and having been made that it is to be levied in each parish. It appears from the form which is set out in the case that this is what has been done. (His Lordship read the 136th and 150th sections.) The commissioners have therefore the option of appointing assessors, and in

(3) 8 B. & S. 764; s. c. 37 Law J. Rep. (n.s.) M.C. 17.

(4) 2 E. & E. 771; s. c. 29 Law J. Rep. (n.s.) M.C. 185.

(1) 8 East 383.

(2) 8 B. & C. 660.

fact they have done so. Then the question is whether the payment of this tax can be said to be the payment of a public tax within the Act? In *Rez v. Bramley* (5), Lord Hardwicke, in speaking of the land-tax, said:—"The great doubt has been whether the Legislature did not mean *parochial* taxes. But this has been long gotten over; and the land-tax has been holden to be within the Act from the notice of inhabitancy that arises by the party's being assessed and paying it." It is said by Mr. Anderson, that although this may be so with respect to the land-tax which is an imperial tax, it is not so with respect to this tax, which is a city tax merely, but no such distinction can be shewn to exist. This is a public rate levied locally in the parish and levied on the persons in the parish, and the effect of levying it must be to give notice to the inhabitants that the rate is levied separately on each parish; it is as much a public tax as an imperial tax levied in the parish would be. In *Reg. v. Everton* (4) a doubt was expressed whether the watch rate was a sufficient public tax, because it was not levied upon the whole parish, but it was held, and properly so, to be a public tax or levy of the parish within the 3 Will. and M. c. 11. s. 6. In *Rez v. Christchurch* (2) the case was quite different; there the watch-rate was not levied on the parish but upon the particular ward, and thus no notice would be given to the people of the parish living in other wards, that the person rated and paying the rates was living in the parish. In the result, I come to the conclusion that a settlement was gained by W. H. Tupman.

MELLOR, J.—I am of the same opinion. The question to be decided is whether W. H. Tupman has been charged with and has paid his share towards the public taxes or levies of the parish. The facts are that he rented and occupied a house in the parish for one year; and in the month of July paid his share which was demanded of him, and for which he was liable, towards the improvement rate and the lamp rate, levied for the parish of St. Sidwell, in respect of his occupation of the

house. Now the cases shew that such payment is sufficient in the case of the land-tax; and if so, I think that, *à fortiori*, it will be sufficient in the present case. It seems to me that W. H. Tupman, by being so charged, and by so making payment, gained a settlement under 3 Will. & M. c. 11. s. 6.

LUSH, J.—I am of the same opinion. There cannot be the slightest doubt that this is a public tax, it having been made for the improvement of the whole city of Exeter. If it would be a public tax if made for the improvement of the parish, *à fortiori* it would be so if made for the improvement of the whole city. The only question upon which I entertained any doubt was whether it was a *public tax of the parish*, because that is essential. It is evident that the authorities of the parish would know by the rate itself who are the inhabitants of the particular parish. Looking at the 141st section, I find that very large powers are given to the Commissioners. They may appoint persons to act as assessors, and may require them to make the rate in such a form as the Commissioners might direct. They have the power to make the rate over the whole city, but, for the sake of convenience, it is to be levied upon each parish. I think the rate falls within the purpose of the Act of Parliament, and that the tax is public in its nature, and made upon each parish. I therefore think that a settlement was gained.

*Order of Sessions quashed.*

*Order of removal confirmed.*

---

Attorneys—J. E. Fox, agent for H. W. Hooper, Exeter, for appellants; G. Frederick Cooke, for respondents.

---

## [IN THE COURT OF QUEEN'S BENCH.]

1870. } REGINA V. THE INHABITANTS OF  
 April 27. } ST. GEORGE-IN-THE-EAST, MID-  
                   } DLESEX.

*Order of Removal—Wife's Status of Irremovability during Husband's Absence—Husband a Foreigner without a Settlement.*

By 9 & 10 Vict. c. 66. s. 1, as amended by 28 & 29 Vict. c. 79. s. 8, no person shall, after the passing of the Act, be removed from any parish in which such person shall have resided for one year next before the application for the warrant. Provided always that whenever any person shall have a wife or children having no other settlement than his or her own, such wife and children shall be removable whenever he or she is removable, and shall not be removable when he or she is not removable.

By 11 & 12 Vict. c. 111. s. 1, the above proviso is repealed, and instead thereof it is enacted that, whenever any person should have a wife or children having no other settlement than his or her own, such wife and children should be removable from any parish or place from which he or she would be removable, notwithstanding the provisions of 9 & 10 Vict. c. 66, and should not be removable from any parish or place from which he or she would not be removable by reason of any provision in that Act.

A woman, after residing for more than a year in the same parish, married an American sailor who had no settlement in England, and lived with him in the parish for a few days. He then left her and went to sea, and during his absence an order was made for her removal from the parish to her maiden settlement. After the making of this order the husband returned:—Held, that the order must be quashed, as the cardinal principle of the Act appeared to be, that where there was no question of the separation of husband and wife, the hardship of removal should, if possible, be avoided, so that the wife having once acquired a status of irremovability, did not lose it by her marriage with one who had no settlement.

Upon an appeal to the Middlesex Quarter Sessions against an order by justices for the removal of Margaret Schooler and her child, aged 4 months, from the parish of St. George-in-the-East, in the Stepney

Union, the order was quashed on the ground of the irremovability of the paupers, subject to the opinion of the Court on the following

## CASE.

1. Margaret Schooler is the wife of Samuel Schooler, a native of Boston, in the United States of America, and he has no settlement in England. The order of removal was therefore founded on the maiden settlement of the pauper, in the parish of Limehouse, in the Stepney Union.

2. The pauper's husband earns his livelihood as a sailor. She was married to him on the 7th of October, 1867, and on the 21st of the same month, while residing in the parish of St. George, he left her there and went to sea in the usual course of his occupation as a sailor, but without having made any provision for her maintenance. In the month of May, 1868, she became chargeable to that parish, and continued chargeable to the time of the making of the order of removal, 24th September, 1868, at which time her husband had not returned to her, but he returned to her between the date of the order and the time of the appeal.

3. The pauper's husband had not, at the date of the order of removal, himself resided in the parish of St. George for so long as one year.

4. Previously to her marriage the pauper, Margaret Schooler, had resided in the parish of St. George for three years and upwards, and she was at that time irremovable from such parish by reason of her residence therein, under the provisions of the Acts 9 & 10 Vict. c. 66. s. 1, 24 & 25 Vict. c. 55. s. 1, and 28 & 29 Vict. c. 79. s. 8 (1). After her marriage she continued to reside in the parish up to the date of

(1) By 9 & 10 Vict. c. 66. s. 1. From and after the passing of this Act no person shall be removed, nor shall any warrant be granted for the removal of any person from any parish in which such person shall have resided for five years next before the application for the warrant. Provided always that the time during which such person shall receive relief from any parish, &c., shall for all purposes be excluded in the computation of time hereinbefore mentioned. . . . Provided always that whenever any person shall have a wife or children, having no other settlement than his or her own, such wife and children shall be

the order of removal, and she would, if she had remained a *feme sole*, have then been irremovable from the parish by virtue of such residence.

5. The appellants contended that, as the husband of Margaret Schooler was a foreigner without any settlement or place to which he could be removed, she was not in his absence removable from the parish of St. George, as she had herself acquired a status of irremovability by residence therein. And, further, that as whenever her husband was present with her they would both be irremovable, she was also irremovable in his absence until his death or desertion.

6. The respondents contended that Margaret Schooler, whilst she remained a married woman, lost the status of irremovability which she had acquired by residence as a *feme sole*, and that as her husband had not acquired a status of irremovability by residence, under the provision of the statutes, she in his absence was removable to her maiden settlement.

7. The Court of Quarter Sessions decided in favour of the appellants and quashed the order of removal on the ground of the irremovability of the paupers.

8. The question for the opinion of the Court of Queen's Bench is whether the pauper and her child were, under the circumstances above stated, irremovable from the parish of St. George. If the Court

removable whenever he or she is removable, and shall not be removable whenever he or she is not removable.

By 11 & 12 Vict. c. 111. s. 1, after reciting that by reason of the generality of the expressions used in the last proviso doubts are entertained as to the meaning thereof, and it is desirable to remove such doubts, it is enacted that the last proviso be repealed, and instead thereof the following be enacted. Provided always that whenever any person should have a wife or children having no other settlement than his or her own, such wife and children should be removable from any parish or place from which he or she would be removable notwithstanding any of the provisions of the last Act, and should not be removable from any parish or place from which he or she would not be removable by reason of any provision in the Act.

By 28 & 29 Vict. c. 79. s. 8. From and after the 25th of March, 1866, the period of one year shall be substituted for the period of residence previously required to constitute irremovability.

shall answer this question in the affirmative, the order of sessions is to be confirmed, but if in the negative, the order of sessions is to be quashed, and the order of removal is to be confirmed.

*Taylor (Collins with him)* for the appellants.—The order of removal was rightly quashed. Marriage with a foreigner does not permanently affect the wife's status of irremovability, but only suspends it while he continues to reside with her. A woman who has married a foreigner without a settlement and is deserted by him may be removed to her maiden settlement just as though she were not married at all—*The King v. The Inhabitants of Cottingham* (2), and the law ought to be the same with regard to the status of irremovability. The words of 11 & 12 Vict. c. 111. s. 1, are obscure, but they shew that it was the intention of the legislature that where the wife only has a settlement this settlement ought to prevail.

[BLACKBURN, J.—The principle of the Act seems to be that husband and wife shall not be separated. But it does not at all follow that because in the absence of the husband the wife's settlement ought to prevail, that the wife under such circumstances should retain her *status* of irremovability.]

It is submitted that the former right of the wife revives after the desertion of her husband. He cited *The Queen v. Bennett* (3) and *The Queen v. The Inhabitants of St. Sepulchre* (4).

*Poland (Poynter with him)* for the respondents.—The wife did not retain her status of irremovability after the departure of her husband. It is admitted that the words of the section are not easily understood, but it is submitted that the wife upon her marriage lost the status of irremovability which she had previously acquired. In *The Queen v. The Inhabitants of St. Marylebone* (5), where the wife of a seaman who had no settlement became chargeable, during her husband's absence on one of his ordinary voyages, it was held that

(2) 7 B. & C. 615.

(3) 23 Law J. Rep. (n.s.) M.C. 39; s.c. 3 E. & B. 341.

(4) 28 Law J. Rep. (n.s.) M.C. 187.

(5) 16 Q.B. Rep. 352; s.c. 20 Law J. Rep. (n.s.) M.C. 61.

the husband's absence under these circumstances was, for the purposes of the wife's removability, equivalent to desertion, and that an order for her removal to her maiden settlement was good, Lord Campbell, C.J., saying (p. 356), "There is no hardship in thus removing the wife; when the husband returns to this country he will find her in the parish to which she has been removed, and he may live with her either in that parish or in any other." In *The Overseers of Much Hoole v. The Overseers of Preston* (6), an Irishman, having no English settlement, married a woman settled in A., and lived with her in B. for more than five years. He then deserted her, and left the country. It was held that she was removable to B. As for the objection that husband and wife ought not to be separated, it will not be denied, that if the husband had, but the wife had not, a *status* of irremovability, the wife would be removable in her husband's absence. The test introduced by the statute is whether the head of the family has acquired a *status* of removability. If the wife is removed, there will be no separation between her and her husband, as he may return to her in any parish he pleases.

BLACKBURN, J.—In this case, though the legislature has used language that, according to the words of the great statesman, was given to conceal the intention, I think we can see our way clearly enough to say that, in this particular case, the sessions have decided rightly. I think we must look at the law as it was before the 9 & 10 Vict. c. 68. At that time a person who had a settlement, however long he or she might have resided elsewhere, would, upon becoming chargeable to the parish, be removed to that place of settlement; but in the case where the husband, having no settlement, married a wife who had a settlement, whilst they resided together neither could be removed, because the wife could not be separated from her husband. Therefore, when the husband was settled, and the wife became chargeable to parish relief, she could not be removed to the place of her maiden settlement. On the other hand, when

(6) 17 Q.B. Rep. 548; s.c. 21 Law J. Rep. (N.S.) M.C. 1.

the husband lived with the wife, and became chargeable, his settlement would be her's, and she would be removed to that place. Then came the enactment of the 9th & 10th of Victoria, which, except so far as regards the period of time necessary in order to acquire irremovability, still remains law, and it says that no person shall be removed from any parish in which such person shall have resided for five years next before the application for the warrant. Then it says, "Provided always that whenever any person shall have a wife or children, having no other settlement than his or her own, such wife and children shall be removable whenever he or she is removable, and shall not be removable when he or she is not removable." The proviso is re-enacted in the 11th & 12th of Victoria, c. 111, as follows: "Whereas by reason of the generality of the expressions used in the last proviso, doubts are entertained as to the meaning thereof"—I may say, that although that recital is right enough, doubts might have been entertained for other reasons than that—"and it is desirable to remove such doubts, be it therefore enacted that the said last proviso be repealed, and that instead thereof the following be enacted" (the learned judge then read the proviso at length).

Then comes the question what is the meaning of this amendment? Mr. Poland asks us to read the words, "having no other settlement than his or her own," as applying to a person having a child or children, and not applying to a person having a wife only, and then it would mean this; when we establish the status of irremovability, we leave the common law principle applicable to such cases, namely, that you shall not separate the husband and wife, untouched, but if the husband has got a settlement, the wife shall be removed to that settlement, and where the husband has got no settlement, we will not touch the question as to whether the wife shall be removable to her own settlement; we leave the rights of the parish and others untouched as regards that, but we direct that if the wife in such a case shall have resided so long as that she has acquired the status of irremovability, that in that case she shall not be removed to her own

maiden settlement, but if she has not resided so long, the proviso does not apply. If she has no settlement of her own she shall be tacked on to her husband, shall go if her husband goes, and if he does not go she shall not go. Taking that view of the matter, is the present case within the enacting part of the section? I think yes. We find that in *The Queen v. Glossop* (7), the Court decided that where a married woman had resided in the same parish for three or four years with her husband, and then her husband dying, she, as widow, continued to reside there one or two years more, so that the two terms together made up the five years, she had acquired the status of irremovability under 9 & 10 Vict. c. 66. Here, this woman has resided before her marriage for more than one year in the parish, and she continued to reside there after her marriage up to the present time. Now where the woman has thus resided, and continues to reside in the same parish, I cannot see, if the case of *The Queen v. Glossop* (7) be good law, why she is not within the enacting part of the statute.

Then it is said that she falls within the proviso, inasmuch as the husband has not resided for a year without the receipt of relief; so that he would, if he had a settlement of his own, be removed to that place, and she would go with him. That is the argument; but it comes to this: the husband not being removable in fact to any place, having no settlement of his own to which he could be removed, and not being here, you are to send the wife away from her own and her husband's residence to her own place of settlement. Whether the legislature meant to except such a case as the present one from the operation of the proviso or not I cannot say, but if it did mean to do so, it would exactly do what it has done, namely, confine the proviso to the case of a wife, who has no settlement other than her husband's; and say that she is not to be taken away to a place different from her husband's place of residence altogether, merely because the husband is absent from her. If, on the other hand, we adopt the conclusion that Mr. Poland urges upon us, we should have this iniquity: that if the

(7) 12 Q.B. Rep. 117; 17 Law J. Rep. (N.S.) M.C. 171.

woman had been living in such a state as to be the man's mistress instead of his wife, one state of circumstances would exist; but because she has married, instead of living in sin, she is to be sent away because he had no settlement; whereas she could not be removed if she had been living in a state of concubinage instead of being his wife; and we are asked to say that the legislature has unwarily enacted that in the former case she is to be removable. I think if the legislature had meant this, they would have distinctly said so. As to the supposed case of a husband with a status of irremovability and a wife without one, and the wife becoming chargeable in the husband's absence, it is sufficient to say that this might be a hard case, and when it arises we must deal it, and say how it is to be decided; but probably before that time the law upon the subject will all be altered.

MELLORE, J.—I am of the same opinion. The proviso has been several times under consideration, and I always come to it with the same difficulty as before. When I look at the policy of the Act of Parliament which is to obviate the oppression of removing a person who has resided for a year (formerly five years) in a particular district, and breaking up all the associations with that place, I should like to see my way very clearly before I interfered with a policy so plainly founded upon humanity. It appears to me that when a woman who has acquired the status of irremovability marries a man who has no settlement or residence of his own, but who resides with her until, in the exercise of his business, he goes away, intending to return, we should violate the Act of Parliament if we gave the effect to it which is contended for by Mr. Poland. I do not mean to say that these provisos are entirely intelligible, but I think the only sensible construction, or the most sensible construction to be put upon the Act of Parliament, is that which my brother Blackburn has suggested.

HANNEN, J.—I can see no reason for reversing the decision of the sessions.

*Judgment for the appellants.*

Attorneys—W. H. Swepstone, for appellants; Stone, Townson & Morris, for respondents.

[CROWN CASE RESERVED.]

1870. }  
 May 7. } REGINA v. ELIZABETH BROWN.

*Concealment of Birth—Secret Disposition—24 & 25 Vict. c. 100. s. 60.*

*The prisoner put the dead body of her child over a wall which was four and a half feet high and divided a yard from a field. The yard was at the back of a public-house, and entered from the street by a narrow passage. The prisoner did not live at the public-house, and must have carried the body from the street up the passage to the yard. The field was grazed by the cattle of a butcher, and the only entrance to it was through a gate leading from the butcher's own yard. There was no path through the field, and a person in the field could only see the body in case they went up to the wall, close against which the body lay. A little girl, picking flowers in the field, found the body of the child, twenty yards from the gate. There was nothing on or over the body to conceal it:—Held, that there was evidence to go to the jury of a secret disposition of the dead body of the child, and a conviction for endeavouring to conceal the birth of the child, by secretly disposing of its dead body, was confirmed.*

CASE reserved by BRETT, J.

The prisoner, Elizabeth Brown, was tried and convicted before me at Newcastle, at the last Spring Assizes for the county of Northumberland, for endeavouring to conceal the birth of her child by secretly disposing of the dead body thereof.

The evidence as to the disposition of the body was a statement by the prisoner that she had put the body over a wall, near which it was found, and statements before the jury by witnesses, that the wall was four and a half feet high, dividing a yard from a field; that the yard was at the back of a public-house, used for the convenience of that house and three other tenements, by the occupiers thereof; that there was no thoroughfare into or through the yard, and no other entrance to it than by a narrow passage from the street; that the prisoner, who did not live at the public-house or at any of the tenements, must have passed from

the street into the yard, in order to throw the body over the wall into the field; that a person looking over the wall from the yard would see the child, but persons going through the yard, or using it in the ordinary way, would not see the child—the wall would hide the child from such persons; that the field in which the body was found was a grass field, used by a butcher to graze cattle; that it was a field with no gate into it from any road or from the public-house yard, but with a gate from the butcher's own yard; that there was no public path through the field; that there was no track or path in the field which would take anyone within sight of the body; that no person going into the field in their ordinary occupation would go near the body or see it; that no one in the field would see it unless they went accidentally or on search up to the part of the wall where the body lay; that a little girl, picking flowers in the field, went accidentally to the wall, and found the body; that it was close to the wall, as near to it as it could possibly be; it seemed as if it had been thrown over the wall; there was blood on the wall; the body was lying on its face, at twenty yards from the gate, naked, with nothing on or over it, nothing to conceal it but its situation in the field and the wall.

Upon this evidence it was contended on behalf of the prisoner, that there was no evidence of a secret disposition of the dead body, and the case of *Reg. v. Nixon* (1) was cited. I left upon this part of the case the following question to the jury:—

Did the wall and the position of the child in the field, and, with regard to the wall, and the mode in which the field and the yard were used, conceal the body from all the world, unless from a person who by searching for the child might find it, or by going out of the way in the field, or by looking over the wall, might accidentally discover it? I told them that if they found an answer in the affirmative, they might find that there was a secret disposition of the body, but that if they found an answer in the negative, they could not, in my opinion, find that there was a secret disposition.

(1) 4 Fost. & F. 1040.



The jury found the prisoner guilty.

I desire the judgment of the Court of Criminal Appeal upon two points—first, whether there was any evidence of a secret disposition of the dead body of the child, within the meaning of the statute; and secondly, whether, if there was such evidence, the form in which the question was left to the jury was wrong in law. If the Court should be of opinion that there was no evidence, or that the form of the question was wrong, then the conviction to be quashed; but if the Court should be of opinion that there was evidence, and that the form of the question was not wrong, then the conviction to stand.

No counsel appeared for the prisoner.

*Ridley*, for the prosecution, contended that there was evidence to go to the jury, and cited *Reg. v. Clarke* (2), and *Reg. v. Nison* (1), cited therein; *Reg. v. Sleep* (3); *Reg. v. Eliza Cooke* (4).

[WILLES, J.—Is there any case against you?]

No, it is believed not.

(He was then stopped.)

BOVILL, C.J.—The first point is whether there was any evidence of a secret disposition within the statute. That is a question which depends on the circumstances of each particular case. The most public exposure may be a secret disposition, as for instance, in the middle of Dartmoor, or on the top of a mountain in Scotland in winter. It is for the jury to consider. There was here abundant evidence of a secret disposition. As to the second point, we think the direction to the jury was perfectly correct.

WILLES, J., BYLES, J., HANNEN, J., and CLEASBY, B., concurred, BYLES, J., observing, "I doubt if we have power to question the direction."

*Conviction affirmed.*

[CROWN CASES RESERVED.]

1870. }  
May 7. } THE QUEEN v. JOHN GUTHRIE.

*Procedure—Indictment for Abusing Girl between the Ages of ten and twelve—Verdict of Common Assault.*

The indictment contained one count and charged that the prisoner in and upon a girl between the ages of ten and twelve "unlawfully did make an assault and her did then unlawfully and carnally know and abuse against the form," &c. The offence of carnally knowing and abusing was disproved, but there was evidence of an indecent assault, which was left to the jury, who found the prisoner Guilty of a common assault:—Held, that the indictment charged an assault as a distinct and separable offence, and that the conviction was good.

CASE reserved by the learned chairman of the Court of Quarter Sessions for the county of Durham.

John Guthrie was tried on an indictment, of which the following is a copy:—

"Durham, to wit, The jurors for our Lady the Queen upon their oath present that John Guthrie on the twenty-fourth day of December, in the year of our Lord one thousand eight hundred and sixty-nine, in and upon one Margaret Davidson, a girl above the age of ten years, and under the age of twelve years, to wit, of the age of ten years and three days, unlawfully did make an assault, and her, the said Margaret Davidson, did then unlawfully and carnally know and abuse against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity."

There was no other count in the indictment.

The offence of carnally knowing and abusing the girl was disproved, but there was evidence of an assault of an indecent and very violent character, which I left to the jury, who found the accused guilty of a common assault.

The opinion of this Honourable Court is requested as to whether John Guthrie could be properly convicted on this indictment of a common assault.

No counsel appeared for the prisoner.

(2) 4 Fost. & F. 1040.

(3) 9 Cox C.C. 559.

(4) 22 Law Times, N.S. 216.

*Edge*, for the prosecution.—Two misdemeanors are charged in the indictment, but no objection on the ground of duplicity can now be taken—*Nash v. Regina* (1). It is legal to convict on either charge—*Rea v. Withal and Overend* (2). In *Rea v. Dawson* (3), on an indictment for assaulting a girl with intent to abuse and carnally know, the jury found that the prisoner assaulted with intent to abuse, but negatived the intention carnally to know, and Holroyd, J., held that the averment of intention was divisible.

[WILLES, J.—I see no difference between abusing and carnally knowing.—CLEASBY, B.—No one disputes that if the charge be double you may prove one. The question is whether in this indictment two offences are charged.]

The point in the present case is undecided, but there was a similar one in *Reg. v. Banks* (4), where on an indictment for feloniously assaulting, and carnally knowing, &c., a girl under ten, it was urged that the prisoner might be convicted of an assault, and Patteson, J., is reported to have said that an assault was not included in that charge, but the facts of that case shewed consent on the part of the girl, and Patteson, J., may have referred merely to the facts of that case. And see *Reg. v. Cockburn* (5), for a similar ruling. Though the precise point is new, the same principle was decided in *Reg. v. Oliver* (6), *Reg. v. Yeadon* (7), *Reg. v. Taylor* (8). (He was then stopped.)

BOVILL, C.J.—We are agreed that the conviction was right. The indictment charges as a distinct offence that the prisoner “unlawfully did make an assault.” The indictment further alleges that the prisoner “did unlawfully and carnally know,” &c., being a statutable offence. If there were any objection to

the indictment it would be for duplicity, but at this stage that is no objection (9). It is only necessary to prove such facts as are material to constitute the offence. The charge of assault could not be sustained if consent were proved, but there was no consent here, and the charge was one of a substantive common law offence. I can see no ground for not finding the prisoner guilty of what is a distinct and separable offence. The cases of *Reg. v. Oliver* (6), *Reg. v. Yeadon* (7), and *Reg. v. Taylor* (8), are abundant to establish the point for which they were cited.

WILLES, J., concurred.

BYLES, J.—I am not free from doubt, but my doubt is not sufficiently strong to justify me in differing from the rest of the Court.

HANNEN, J., and CLEASBY, B., concurred.  
Conviction affirmed.

(9) This would be on the ground that this objection was for a formal defect apparent on the face of the indictment, and that by 14 & 15 Vict. c. 100. s. 25, “every objection to any indictment for any formal defect, apparent on the face thereof, shall be taken by demurrer or motion to quash such indictment before the jury shall be sworn and not afterwards.” In *Regina v. Ryland*, 37 Law J. Rep. (N.S.) M.C. 10; s.c. Law Rep. C.C.R. 99, the sufficiency of the allegation of the breach of duty in an indictment, charging a neglect to provide food for a child of tender years, was reserved for the consideration and considered by this Court, upon the ground it would seem that the defect though apparent on the face of the indictment was not formal merely; and again in *Regina v. Larkin*, Den. C.C. 365; s.c. 23 Law J. Rep. (N.S.) M.C. 123, this Court considered the sufficiency of a count for receiving stolen property, and considered it bad for not alleging a scienter, and held an amendment to have been improperly made after verdict.

(1) 4 B. & S. 935; s.c. 33 Law J. Rep. (N.S.) M.C. 94.

(2) East P.C. 517.

(3) 3 Stark. 62.

(4) 8 Car. & P. 574.

(5) 3 Cox C.C. 543.

(6) 30 Law J. Rep. (N.S.) M.C. 12.

(7) 31 Law J. Rep. (N.S.) M.C. 70; s.c. L. & C. 81.

(8) 38 Law J. Rep. (N.S.) M.C. 106.

1870. }  
 April 27. } THE QUEEN v. WHITBY UNION.

*Pauper Lunatic—Order of Maintenance—Irremovability—Removal of Lunatic by Parents—Break in Residence—9 & 10 Vict. c. 66. s. 1; 16 & 17 Vict. c. 97. ss. 97, 102.*

*A domestic servant, who had acquired the status of irremovability by residence in the R. union, was seized with madness and was removed by her relations from her master's house to the residence of her parents in a different union. Her wages were paid in full, and her master had no intention of receiving her back in his house. After staying with her parents for a single night, she was sent to the workhouse of the second union, and seven days afterwards taken to the County Lunatic Asylum:—Held, that the removal of the lunatic under these circumstances, without any exercise of will on her part, did not constitute a break in her residence, so as to deprive her of her status of irremovability, and that the order for her maintenance under 16 & 17 Vict. c. 97. ss. 97, 102, must be made on the R. Union and not on the union in which was the place of her settlement.*

*Semble, per Hannen, J., that while the incapacity of the lunatic continued, no change in her residence could take place so as to affect her status of irremovability.*

Upon an appeal against an order by justices of Middlesex, whereby the settlement of Esther Marshall, a pauper lunatic, was adjudged to be in the township of Whitby in Whitby union, and the guardians of Whitby union were ordered to pay a certain sum of money for the expenses of the examination of the lunatic and her removal to a lunatic asylum, also a certain sum for her maintenance, &c., therein, up to the date of the order, and also a certain weekly sum for her future maintenance, &c., in the asylum, the order was confirmed, subject to the opinion of the Court on the following

#### CASE.

1. Esther Marshall is a single woman, aged 28, legally settled in the township of Whitby in the Whitby union. For one year and three months, immediately

NEW SERIES, 39.—MAG. CAS.

preceding the 17th of September, 1868, she had been a domestic servant in the service of a Mr. Dunn, of Richmond, in the Richmond poor law union in the county of Surrey, as a yearly servant, and had during this period resided and slept at the house of her master in Richmond.

2. On the night of Wednesday, the 16th of September, 1868, she was seized with a severe attack of mania, and her master thereupon went to the workhouse of the Richmond union, and there informed the master of the workhouse and the gateporter that she was insane and that he was unable to keep her in his house, and he requested them to remove her to the workhouse to be taken care of. The master of the workhouse stated in reply, that he could not interfere in any way as she was still residing in her master's house.

3. The next morning, the 17th of September, the master of Esther Marshall had an interview with the clerk to the guardians of the poor of the Richmond union, and afterwards on the same day attended with his doctor before the board of guardians of the union (who happened to be then sitting at the workhouse) and informed them of the facts before mentioned relating to Esther Marshall, and requested them to remove her to the workhouse in order that she might be properly taken care of. The board, however, stated in reply, that they had no power to interfere in any way, and the master then telegraphed to the parents of the lunatic, who were residing at Ratcliffe in the Stepney union, a distance of about fourteen miles, to come to Richmond to remove her. In the afternoon of this day (17th of September, 1868) her mother and her brother arrived at Richmond. The master thereupon paid the mother her daughter's wages up to that day, and having hired a fly at his own expense, Esther Marshall was removed in it by her relations from the residence of her master at Richmond to the residence of her parents at Ratcliffe in the Stepney union. The master had not the slightest intention or expectation of receiving her back again into his house.

4. Esther Marshall remained at the home of her parents (who were poor per-

o

sons and in receipt of out-door parochial relief from the township of Whitby) one night only, during which time she attempted to throw herself out of the window. The next morning (the 18th of September) her parents applied to the relieving officer of the Ratcliffe district of the Stepney union, who visited the lunatic and had her removed in due course on the same day to the workhouse of that union. She remained in the Stepney union workhouse for seven days and was then sent to the lunatic asylum for the county of Middlesex on the 26th of September, where she has since remained confined as a pauper lunatic.

5. On the 23rd of October, 1868, the order appealed against was made.

6. Esther Marshall had on the 16th of September, 1868, acquired the *status* of irremovability from the Richmond union under 9 & 10 Vict. c. 66. s. 1; 24 & 25 Vict. c. 55. s. 1; and 28 & 29 Vict. c. 79. s. 8, by virtue of residence therein for more than a year.

7. It was contended on behalf of the appellants, that as Esther Marshall had on the 16th of September, 1868, acquired a *status* of irremovability by residence in the Richmond union, the order for her past and future maintenance ought not to have been made upon the guardians of the place of her settlement, but ought to have been made upon the guardians of the Richmond union under 16 & 17 Vict. c. 97. s. 102 (1), and it was further con-

tended that her removal under the circumstances mentioned, did not constitute a break of her residence in Richmond so as to destroy her *status* of irremovability.

8. It was contended on behalf of the respondents, that the order was rightly made on the guardians of the place of settlement, and further, that the removal of Esther Marshall under the circumstances mentioned did constitute a break of residence so as to destroy her *status* of irremovability.

9. The Court of Quarter Sessions decided in favour of the respondents and confirmed the order appealed against. The question for the opinion of this Court is whether, under the circumstances above stated, the guardians of the Stepney union were prevented from obtaining an order on the guardians of the Whitby union for the maintenance of Esther Marshall under 16 & 17 Vict. c. 97. s. 97.

10. If the Court shall answer this question in the affirmative, then the order of sessions is to be quashed; but if in the negative, then the order of sessions is to be confirmed.

*Taylor (Collins with him)* for the respondents.—The order for the maintenance of the pauper under 16 & 17 Vict. c. 97, was rightly made on the guardians of the

still in confinement, also to pay to the treasurer, officer, or proprietor of the asylum, hospital, or house the reasonable charges of the future lodging, maintenance, medicine, clothing, and care of such lunatic," &c.

(1) By 16 & 17 Vict. c. 97. s. 97: "It shall be lawful for any two justices for the county or borough in which any asylum, &c., in which any pauper lunatic is or has been confined is situate, or to which such asylum wholly or in part belongs, or from any part of which any pauper lunatic is or has been sent for confinement, at any time to inquire into the last legal settlement of such pauper lunatic, and if satisfactory evidence can be obtained as to such settlement in any parish, such justices shall, by order under their hands and seals, adjudge such settlement accordingly, and order the guardians of the union to which the parish in which such lunatic is adjudged to be settled belongs, or of such parish in case such parish be not in a union or be under a board of guardians, and if not, then the overseers of such parish to pay to the guardians of any union or parish, or the overseers of any parish, all expenses incurred by or on behalf of such union or parish in or about the examination of such lunatic, &c., within twelve months previous to the date of such order; and if such lunatic is

By section 102: "The expenses incurred since the 29th of September, 1853, or hereafter to be incurred in and about the examination, bringing before a justice or justices, removal, lodging, &c., of a pauper lunatic heretofore or hereafter removed to an asylum, &c., under the authority of this or any other Act, who would at the time of his being conveyed to such asylum, hospital, or house, have been exempt from removal to the parish of his settlement or the country of his birth by reason of some provision in the Act 9 & 10 Vict. c. 66, shall be paid by the guardians of the parish wherein such lunatic shall have acquired such exemption if such parish be subject to a separate board of guardians, or by the overseers of such parish where the same is not subject to such separate board, and where such parish shall be comprised in any union, the same shall be paid by the guardians and be charged to the common fund of such union so long as the cost of the relief of paupers rendered irremovable by the last-mentioned Act shall continue to be chargeable upon the common funds of unions," &c.

Whitby Union.' At the time when the pauper was conveyed to the county asylum she was not exempt from removal to the place of her settlement within the meaning of the proviso to 16 & 17 Vict. c. 97. s. 102, for there had then been no such unbroken residence on her part (under the statutes 9 & 10 Vict. c. 66. s. 1, 24 & 25 Vict. c. 55. s. 1, and 28 & 29 Vict. c. 79. s. 8), as to confer upon her a *status* of irremovability. In *The Queen v. The Inhabitants of Whissendine* (2), where a pauper lunatic having gained a settlement by estate was removed from the parish where he was residing to the county lunatic asylum under an order of justices, it was held that he had "ceased to inhabit" within the meaning of section 68 of the Poor Law Act, and did not retain his settlement after the removal. *The Queen v. St. Giles-in-the-Fields* (3) shews that the *status* of the lunatic, at the time of his conveyance to the asylum, is all that is to be considered.

[BLACKBURN, J., referred to *The Queen v. St. Leonard's, Shoreditch* (4)].

In order to prevent an absence from a parish from constituting a break in the residence there must be an *animus revertendi*—*The Queen v. Glossop* (5). In the present case the three essentials to an absence for a temporary purpose are wanting. There was first no departure for a temporary purpose; secondly, no intention to return; thirdly, no home to return to, inasmuch as the pauper had been dismissed from her master's service. She was not absent from Richmond on a visit, with the intention of returning, so that the case cannot be brought within *Leeds v. Wakefield* (6).

[BLACKBURN, J.—The pauper was physically absent, without any intention one way or the other.]

Where an actual absence is proved there is a break in the residence unless a clear intention to return can be made out. In

(2) 2 Q.B. Rep. 450; s. c. 14 Law J. Rep. (N.S.) M.C. 42.

(3) 3 E. & E. 224; s. c. 30 Law J. Rep. (N.S.) M.C. 12.

(4) 4 E. & B. 236; s. c. 24 Law J. Rep. (N.S.) M.C. 41.

(5) 35 Law J. Rep. (N.S.) M.C. 148.

(6) 7 E. & B. 258; s. c. 26 Law J. Rep. (N.S.) M.C. 37.

*The Queen v. Stapleton* (7), the pauper, who resided in one parish where he had a house rented by himself, was hired, and the terms of his hiring required him to reside in another parish, it was held, that his absence from the parish under the hiring, though he intended ultimately to return, constituted a break in his residence. *The Queen v. Tacolnstone* (8), and *The Queen v. Brighthelmstone* (9), are to a similar effect.

[BLACKBURN, J.—Was not the absence in all these cases such that, unless there was an intention to return, there must have been an intention to be absent? Was there not, not merely a physical crossing of the border, but an intention to change the residence?]

There is no decision which exactly applies to the facts of the present case, but it is contended that the Court must look only at what was the intention of the mother of the pauper in removing her from Richmond. The mother during the lunacy of her daughter was her natural guardian, and the proper person to exercise any election on her behalf.

*Poland and Poynter* for the appellants. —The order was improperly made on the guardians of the pauper's place of settlement. Irremovability is a right created for the benefit of the person who has resided for the necessary period. The right which is given by a term of residence within a particular district can only be lost in two ways, first by the operation of law, as in *The Queen v. The Inhabitants of Seend* (10), where it was held that the *status* was lost by the pauper in consequence of an absence from the parish under an order of removal, though she intended to return if the parish would allow her to do so; so also in *The Queen v. Halifax* (11). It was accordingly found necessary to provide in the Act 12 & 13 Vict. c. 103, that the period of confine-

(7) 1 E. & B. 766; s. c. 22 Law J. Rep. (N.S.) M.C. 102.

(8) 12 Q.B. Rep. 157; s. c. 18 Law J. Rep. (N.S.) M.C. 44.

(9) 4 E. & B. 236; s. c. 24 Law J. Rep. (N.S.) M.C. 41.

(10) 12 Q.B. Rep. 133; s. c. 18 Law J. Rep. (N.S.) M.C. 12.

(11) 12 Q.B. Rep. 111; s. c. 17 Law J. Rep. (N.S.) M.C. 153.

ment in a lunatic asylum should be excluded from the computation of the term of residence—*The Queen v. Hartfield* (12), *The Queen v. St. Andrew, Holborn* (13). Or secondly, if the *status* is not lost by operation of law it can only be affected by the voluntary act of the party, and here the pauper was incapable of any exercise of volition. If the argument on the other side is correct, she might lose her *status* by being carried across the border in a state of insensibility. In *The East Retford Union v. The Strand Union* (14), where a pauper lunatic, after living by consent apart, and in a different parish from her husband (who was irremovable under 9 & 10 Vict. c. 66), was sent to a lunatic asylum, it was held that she was not irremovable. The term of absence cannot in principle be material, so that it must be argued that if the pauper had recovered the day after she left Richmond and returned, that there would still have been a break in her residence. It must not be supposed that the intention of the master in dismissing his servant can affect her rights. He might dismiss her from his service, but could not remove her from the parish. Nor had the mother any peculiar authority over her child, who was emancipated. In *The Queen v. St. Mary, Islington* (15), it was held that the maintenance of a pauper lunatic above the age of sixteen is not relief given to the parent, so as to prevent the parent acquiring a *status* of irremovability.

[BLACKBURN, J.—Suppose that she had been maintained in the asylum for a number of years. Do you say that time makes no difference?]

Without saying what might be the case under such circumstances it is submitted that where the irremovability has been clearly acquired, the *onus* is upon those who seek to shew that it has been lost. He cited *The King v. Sutton* (16), and *The King v. Sudbrooke* (17).

(12) 17 Q.B. Rep. 746; s.c. 21 Law J. Rep. (N.S.) M.C. 65.

(13) 17 Q.B. Rep. 746; s.c. 21 Law J. Rep. (N.S.) M.C. 69.

(14) 3 B. & S. 122.

(15) 3 B. & S. 46; s.c. 31 Law J. Rep. (N.S.) M.C. 233.

(16) 5 Term Rep. 657.

(17) 4 East 356.

BLACKBURN, J.—I think that the order of the justices must be quashed, and that we must answer the question put to us by saying that under the circumstances the guardians of Whitby union were not liable for the pauper's maintenance. By 16 & 17 Vict. c. 97, it is enacted (the learned Judge read the material parts of sections 97 and 102).

The question comes to be whether, at the time when this woman was sent to the asylum, she was exempt from liability to removal to the parish of her settlement, on the ground that she had remained so long in Richmond as to have obtained a *status* of irremovability in that union. If so, the order ought not to have been made on the parish of settlement, that is, Whitby. I think that under the circumstances here stated, she had acquired a *status* of irremovability, and that she had not lost it. It must be remembered that the Act which gives the *status* of irremovability, now created by one year's residence in the parish, was passed for the benefit of the pauper. The scheme of the legislature was not to give advantages to one parish over another, but to relieve persons, who happen to become poor, from the extreme hardship of being removed from the place where they had acquired all their friends, to the place of their birth and settlement, in which it might be they would be absolute strangers—a hardship which used to fall very heavily upon them. Where the *status* of irremovability has been once acquired, the question arises, when does it cease? It ceases as soon as the paupers cease to reside in the parish. I take it that where the parties acquire the *status* of irremovability, the *onus* is upon those who seek to prove that circumstances have occurred which put an end to it. They must shew the alteration of residence, and if they do, as when the pauper has chosen to reside elsewhere, or where he goes out of the parish and sleeps or dwells for a time in another place, *prima facie* he must be supposed to have intended to go away, and to have changed his residence. If acts can be shewn to rebut this inference, or to shew that he retained the intention of returning, and that he was resident in the parish, although temporarily out of it on a visit, without any intention to change

his residence, the presumption is rebutted, and he is no longer held to have changed his residence. In the present case the unfortunate woman had become insane while in the parish of Richmond, and she did not intend to quit or change her residence. She had no intention of quitting the place, she was incapable of deciding one way or the other. I think that there was nothing here to change the *status*. I think that the *status* ought to continue until it is affirmatively shewn to have been lost. As she was incapable of choosing for herself, the mere fact of her being carried across the border of the parish does not change her residence. I do not mean to say that in her condition there can be no change of residence, but I should be inclined to think it can only be where there is a regular guardian appointed for the lunatic, or where a committee is appointed by the Lord Chancellor, that the guardian might choose for the lunatic, and might exercise the right and change the residence. I do not wish to say one way or the other, whether there might not be a case where a person had acted as guardian *de facto*, something like the way in which an executor *de son tort* would act for the benefit of the estate, whether, under such circumstances, this guardian would have a right to choose, and act for the lunatic and so change the residence. It is sufficient to say no such question arises here. As to the circumstance of the mother, herself a pauper, receiving the lunatic for one night, and then removing her out of the parish for one night, I should think, judging of it as a question of fact, that the intention must have been to remove her in order that she might get relief in the parish of Whitby, which she had been unable to obtain in Richmond. The mere fact of her being the mother would not give her the power to change the residence of her daughter, even if there was any such intention, which I cannot think. As it seems to me, Mr. Poland was right when he said that if this woman had recovered from her lunacy, and come back to Richmond, the question would be, had anything occurred in the interval which deprived her of the *status* of irremovability, and entitled the parish of Richmond to cause her to be removed, and that it must be

admitted that she herself had done nothing of the kind, and had no intention of doing so, and that no person having any authority to act for her, had made an election and changed her residence. In the question of who shall bear the expenses of the lunatic, the legislature has no interest at all, except for the benefit of the person who has become lunatic; you must look, therefore, to see whether the change of circumstances is such as to deprive the lunatic of the right not to be removed where that right is exercised and claimed for the benefit of the pauper herself, and it seems to me that if the pauper had recovered and returned to Richmond, nothing would have occurred that would have put an end to her *status* of irremovability. Whether it might be done after a long lapse of time is a question we can decide when the case arises.

MELLOR, J.—I am of the same opinion. Our decision, no doubt, cannot injuriously affect the lunatic one way or the other; but it depends on circumstances which might affect her condition. It appears to me that the object of the legislature in providing for the irremovability of persons who have resided for a long period in a particular parish, was to prevent the oppression which frequently occurred in compelling persons whose whole associations were in the place of residence, going to a distance where they had probably no ties whatever, because, except as Mr. Poland said, that their grandfather or grandmother might have been at some time settled there. But it appears to me, in this particular case, there was no actual and there could be no constructive assent on the part of the pauper to her withdrawal from the parish. As Mr. Poland said, if she had the power of acting according to her own will, although her master might have turned her out of his house, he could not have turned her out of the parish, and she had a right if she chose to remain in it. I think the *status* of irremovability which is acquired under these Acts of Parliament is for the benefit of paupers, and that some act of theirs in general ought to be shewn before that *status* can be put an end to; and although in this case there was an actual and physical removal by the mother

(which caused me to hesitate for some little time, as to whether the mother, being apparently the natural guardian of the lunatic, although not compellable to maintain her by reason of her own poverty, might not have the power to change her *status*), yet I am satisfied that there was nothing that took place in the interval which prevented the pauper from returning to Richmond, and there asserting her *status* of irremovability. It lies, on the other side, to shew that it has been determined, and they have failed to satisfy me that it has, and therefore I come to the conclusion that the rule must be made absolute for quashing the order.

HANNEN, J.—I am of the same opinion. The *status* of irremovability can only be put an end to by shewing that the residence—the usual residence of the pauper, has been changed. That depends upon intention. If the residence is once established, it must be presumed to continue, until the intention to abandon it is shewn. Now, in this case, the lunatic was incapable of an intention to abandon that which had become her place of residence. At one time I was inclined to think that the fact that the master had prevented his house from continuing to be her place of residence might affect the case. On consideration, I think that is not so. If he had turned her out of his house, that would not make the parish cease to be her place of residence, and if she was absolutely incapable of forming an intention on the subject, the fact that she was taken out of this parish, in order to be taken care of by her parents, would make no more difference in the case than if, as has been put in the course of the argument, she had been carried out in her sleep; and while an incapacity to form an intention on the subject continued, I am disposed to go the length that Mr. Poland says he contends for, that so long as that incapacity continues, no change could have taken place in her residence, because after a person has been in a place for so long a time as the law thinks entitles them to be irremovable, it is to be presumed they have cast in their lot with the inhabitants in that neighbourhood, and that they would be likely to seek to continue to get their living as they had

before, amongst those people in the midst of whom they had been resident so long. I repeat, therefore, if you imagine a complete suspension of the power of choosing on the part of the pauper, the inference still continues, that when the disability is removed he will go back to the place in the midst of which he has been living for a considerable period of time. On these grounds, I agree with my Brethren, and the order must be quashed.

*Order of Justices quashed.*

---

Attorneys—Stone, Townson & Morris, for Gray & Parmett, Whitby, for appellants; W. H. Sweptstone, for respondents.

---

1870. } ALLEN, appellant, v. THOMPSON,  
May 7. } respondent.

*Game—Sunday—Snare*—"Engine or Instrument"—1 & 2 Will. 4. c. 32. s. 3.

The 1 & 2 Will. 4. c. 32. s. 3, provides, that "if any person whatsoever shall kill or take any game, or use any dog, gun, net, or other engine or instrument for the purpose of killing or taking any game on a Sunday or Christmas Day, such person shall, on conviction thereof, forfeit and pay for every such offence such sum of money, not exceeding 5l., as to the said justices shall seem meet."

The appellant on Friday and Saturday, the 13th and 14th of August, was setting snares made of wire upon land over which, by consent of the owner and occupier, he had the right of sporting. Upon the following Sunday the snares were still set, and on that day two dead grouse were found caught in two of them. The appellant had a proper excise license to kill game:—Held, first, that a snare is an "engine" or "instrument" within the section, and second, that although the appellant was not upon the land on the Sunday, he was liable to be convicted for using the snares on that day for the purpose of taking game.



CASE stated by justices for the North Riding of the County of York, under statute 20 & 21 Vict. c. 43.

1. At a Petty Sessions held at Leyburn in and for the division of Hang West in the North Riding of York, on the 24th of September, 1869, and at an adjourned Petty Sessions held on the 29th of October, 1869, an information preferred by William Thompson, hereinafter called the respondent, against Henry Allen, hereinafter called the appellant, under section 3 of statute 1 & 2 Will. 4. c. 32, charging for that H. Allen on the 15th of August (being Sunday) at the township of Bainbridge in the North Riding, did then and there unlawfully use certain engines or instruments, to wit, snares, for the purpose of then and there killing game, to wit, grouse, in an allotment there situate in the occupation of Christopher Percival, contrary to the form of the statute in that case made and provided, was heard and determined by the justices, and upon such hearing the appellant was duly convicted before them and adjudged to pay a fine of 5s. and 11. 4s. 6d. costs.

4. Upon the hearing of the information it was proved on the part of the respondent, and found as a fact, that the appellant was setting snares on the 13th and 14th of August in an allotment or pasture in the township of Bainbridge. There was no evidence to shew that the appellant was there on the 15th of August, but the respondent went into the allotment on that day, and saw fifty or sixty snares set ready to catch grouse, and found two dead grouse caught in the two snares.

5. It was contended on the part of the appellant, that the setting of the snares on the 13th and 14th of August, and not going on the land to examine them on the 15th of August, was not such a user as is contemplated by section 3 of 1 & 2 Will. 4. c. 32.

6. It was also contended on the part of the appellant that a snare or piece of wire, such as was found set by the respondent, is not an engine or instrument within the meaning of the 3rd section of statute 1 & 2 Will. 4. c. 32.

7. It was admitted that the appellant

had a proper excise license for killing game.

8. It is also an admitted fact that the appellant had the consent of the owner and occupier of the land to sport over it.

9. The justices were of opinion :—

(1). That snares were engines or instruments within the meaning of the 3rd section of 1 & 2 Will. 4. c. 32, and were expressly used for and applicable to the destruction of game.

(2). That having the snares set on a Sunday for the purpose of killing game was a user within the meaning of the above-named section.

(3). That the Act of 1 & 2 Will. 4. c. 32, was not an Act for the observance of the Sabbath, but that section 3 of the same Act was for securing and preserving game during certain days and seasons, and that it was a breach of the Act so to use snares on a Sunday, as that game may be killed by them.

The justices gave their determination against the appellant in manner before stated.

10. The questions for the opinion of this Court were, first, whether it was an offence against the 3rd section of 1 & 2 Will. 4. c. 32, to set snares on a Saturday (or any other day except Sunday) and allow them to remain set so as to catch or entrap grouse on a Sunday; and second, whether a snare was an "engine or instrument" within the meaning of the 3rd section of statute 1 & 2 Will. 4. c. 32.

If the Court should be of opinion that the conviction was legally and properly made, and the appellant was liable, then the conviction was to stand; but if the Court should be of opinion otherwise, then the information was to be dismissed.

*Holker (MacDonald with him)* for the appellant.—A snare is not an "engine or instrument" within this section. The words are, "use any dog, gun, net or other engine, or instrument." The engine or instrument must be *ejusdem generis* with "dog," "gun," or "net," and must be something of which the offender has manual possession at the time of committing the offence. The snares which had been set by the appellant on the Friday or Saturday, were not so in his

possession. It is to be further observed that in the repealed Act 10 Geo. 2. c. 19, the word "snare" is used.

Next the justices were wrong in holding, that the Act was not for the observance of the Sabbath, and were wrong in holding that the appellant had *used* the snares on the Sunday. Before the words "use any dog," &c., the section contains the words "kill or take any game." Those words imply an actual interference with the game; and the word "use," in like manner, means an actual using of, or control over, the snare at the time. The Act was intended to apply to the case of persons killing or taking game, or using dogs, &c., upon land which was their own, or over which they had a right of sporting, upon Sunday or Christmas day. The appellant did not commit any offence upon the Friday or Saturday, and there is no proof that he was upon or near the land on the Sunday. The most that can be said against him is, that he omitted to take up the snares on Saturday night.

[BLACKBURN, J.—Having the snares set on the Sunday, so that two grouse were actually caught in them, affords pretty good evidence that he intended to use them for taking game on that day. LUSH, J.—Observe the next clause of the same section, which provides for killing or taking game between certain periods. The words in the earlier part were "kill or take any game, or use any dog, gun, net," &c. Suppose on the 1st of February the appellant had set a net for the purpose of taking partridges, and upon the 2nd of February one had been taken; could he not have been convicted of taking a "partridge between the first day of February and the first day of September," although he was not there at the time?]

The information was not for killing or taking the grouse, but for using the snares; he was not bound to take them up on the Saturday night.

[BLACKBURN, J.—Why not? He would clearly be bound to take them up when the close time arrived, and if so, why not on Saturday night, the legislature having intended to prevent the killing or taking of game on Sunday?]

It is submitted that the respondent was

bound to prove that the appellant actually used the snares on the Sunday, or, at any rate, that he was watching them, or having the control over them.

No counsel appeared for the respondent.

BLACKBURN, J.—I think that there is no doubt about the conviction being right. The legislature certainly did a curious thing when they mixed up in one section the provisions for preventing the killing and taking game on Sunday and Christmas day, with those relating to the close times when it is not lawful to kill or take game; but there cannot be any doubt that if a man puts down a snare on the Saturday, and game is strangled by means of that snare on the Sunday, he may be convicted of killing game on the Sunday, although he was not present at the time. It is sufficient if he causes the death of the game. Then the appellant is charged with using certain engines or instruments, to wit, snares, for the purpose of killing game. He set snares on the Saturday, and we must take it that he intended that they should continue to catch game while they remained there. So long as he allowed them to remain there, so long was he using them for the purpose of killing game. Upon the other point, I think that a snare is quite as much an engine as a net would be.

MELLOE, J.—I am of the same opinion.

LUSH, J.—I am of the same opinion. According to Mr. Holker it would amount to this, that there could be no such thing as using a snare or engine for any longer time than while a man is actually setting it or superintending it, so that if he sets it and goes away, he would cease to use it. But clearly that cannot be so. It cannot be necessary, in order to make out the fact of *using* it, that he must stop upon the very spot so as to be able to superintend it. So long as he keeps the snare down he is using it.

*Conviction affirmed.*

Attorney, W. Prowting Roberts.

## [IN THE COURT OF QUEEN'S BENCH.]

(SECOND DIVISION.)

1870. } PRESTON, *appellant*, v. BUCKLER,  
 June 1. } *respondent*.\*

*Beerhouse—Rateable Value—Population Area—"Parish or Place"—3 & 4 Vict. c. 61. s. 1—Township.*

*A beerhouse situated in a township having a population of less than 10,000 inhabitants, according to the last parliamentary census, must, if such township be within a parish containing more than 10,000 inhabitants, be rated in one sum to the rate for the relief of the poor of the township in which such house is situate on a rent or annual value of fifteen pounds per annum at the least, or otherwise the license is null and void under the 3 & 4 Vict. c. 61. s. 1—MELLOR, J., hesitante.*

CASE stated by two justices of the West Riding of Yorkshire under the 20 & 21 Vict. c. 43.

At a petty sessions holden at Halifax in and for the parish of Halifax, on the 11th of September, 1869, an information was preferred by the appellant against the respondent under s. 1 of the 3 & 4 Vict. c. 61, for that the respondent, at Sowerby, on the 4th of September last, did unlawfully open his house for the sale of beer, he not being then duly licensed so to do, contrary to the form of the statute, &c.

The township of Sowerby, within which the respondent's house is situate, is a township maintaining its own poor, and choosing its own parochial constables and overseers, and in every respect managing its own local affairs, but is within the parish of Halifax. The township contains a population, according to the last census, of 8,746 persons. The house in which the respondent resides, and in respect of which he obtained a license to sell beer, is rated to the relief of the poor of the township at the sum of 13*l.* 10*s.* gross and 11*l.* 10*s.* rateable value. The population of the parish of Halifax, which includes the borough of Halifax, within which parish the township is situate, contains, according to the last census, 128,667

inhabitants. The parish is about 17 miles in length and 15 or 16 miles in breadth, embracing an area of 75,740 acres, and consists of 23 townships, varying in extent from 10,080 acres to 890 acres, and in population from 28,990 to 388, each of which townships elects its own overseers of the poor, who make a levy or rate over their respective townships for the maintenance of the poor therein. Each township is well known by defined boundaries, maintains its own highways by separate highway rates, is separately rated to the county rate, and in every respect manages its own local affairs, and, where necessary, levies local rates. It was contended for the appellant that as the house of the respondent was rated at a less value than 15*l.*, the license was void. The justices held that the license was valid, on the ground that the words "parish or place" in the 3 & 4 Vict. c. 61. s. 1, read by the light of the interpretation clause of 11 Geo. 4 and 1 Will. 4. c. 64, which is applied to that Act, included a township maintaining its own poor, and dismissed the information. Against this decision the appellant now appealed.

*Anstie* for the appellant.—The beerhouse of the respondent was situated in a parish of more than 10,000 inhabitants, and the fact that it contains several townships within its limits, does not render the parish any the less the area of population to be taken into account under s. 1 of the 3 & 4 Vict. c. 61 (1). If, in a township of

(1) The 3 & 4 Vict. c. 61. s. 1, reciting 11 Geo. 4. and 1 Will. 4. c. 61, and 4 & 5 Will. 4. c. 85, enacts—"That no license to sell beer or cider by retail under the said recited Acts or Act shall be granted to any person who shall not be the real resident holder and occupier of the dwellinghouse, in which he shall apply to be licensed, nor shall any such license be granted in respect of any dwellinghouse which shall not, with the premises occupied therewith, be rated in one sum to the relief of the poor of the parish, township, or place in which such house and premises are situate on a rent or annual value of 15*l.* per annum at the least, if situated in the cities of London or Westminster, or within any parish or place within the bills of mortality, or within any city, cinque port, town corporate, parish, or place, the population of which, according to the last parliamentary census, shall exceed 10,000, or within one mile, to be measured by the nearest public street or path from any polling place used at the last election, for any town having the like population, and re-

P

\* *CORAM* Blackburn, J., and Mellor, J.  
 NEW SERIES, 39.—MAG. CAS.

less than 10,000 inhabitants, situated within a parish of more than 10,000 inhabitants, a license to retail beer may be granted in respect of a house of less annual value than 15*l.*, then also in a parish of less than 10,000 inhabitants, situated in a city or corporate town, of a greater population, a license might be granted in respect of a house of the like annual value, which would be contrary to the intention of the Act. In *Smith v. Bedding* (2), it was held that a beer-house, situated in a hamlet maintaining its own poor, but included in a parish, the population of which, according to the last census, exceeded 2,500, might, under the 15th section of the same Act (3), be kept open

turning a member or members of parliament; nor shall any such license be granted in respect of any dwelling-house which shall not, with the premises occupied therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place, in which such house and premises are situate, on a rent or annual value of 11*l.* per annum, if situate within any city, cinque port, town corporate, parish, or place, the population of which, according to such last parliamentary census, shall exceed 2,500, and shall not exceed 10,000; or within one mile, to be measured, as aforesaid, from any polling place used at the last election for any town having the like population as last aforesaid, and returning a member, or members, of parliament; nor shall any such license be granted in respect of any dwellinghouse which shall not, with the premises occupied therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place, in which such house and premises are situate, on a rent or annual value of 8*l.*, if situated elsewhere than aforesaid; and every license granted contrary hereto shall be null and void."

(2) 35 Law J. Rep. (n.s.) M.C. 202; s. c. Law Rep. 1 Q.B. 489.

(3) The 3 & 4 Vict. c. 61. s. 15 enacts—"That no person, licensed to sell beer or cider by retail under the said recited Acts, or this Act, shall have or keep his house open for the sale of beer or cider, nor shall sell or retail beer or cider, nor shall suffer any beer or cider to be drunk or consumed in or at such house, at any time before the hour of five of the clock in the morning, nor after twelve of the clock in the night, of any day in the week, in the cities of London or Westminster, or within the boundaries of any of the boroughs of Marylebone, Finsbury, the Tower Hamlets, Lambeth, or Southwark, as defined by an Act 2 & 3 Will. 4. c. 64, intituled 'An Act to settle and describe the divisions of counties, and the limits of cities and boroughs in England and Wales, in so far as respects the election of members to serve in parliament,' nor after eleven of

until eleven o'clock at night, although the population of the hamlet itself did not exceed 2,500, and in that case the Court had in view section 1 of this Act.

[BLACKBURN, J.—What I said in my judgment in that case would apply to a city containing a number of small parishes, as, for instance, Norwich, but the question here is whether it follows that it was intended that the Act should so apply to the large northern parishes, almost the size of counties, where a number of townships exist.]

It is submitted that, by the use of the word "parish" next before the word "place," the Act must be construed so to apply—*Scott v. Washington* (4).

*Philbrick*, for the respondent. — The population of the township of Sowerby, and not that of the parish of Halifax, regulates the value of the house in respect of which the license is granted. Sowerby is the "place" contemplated by the 3 & 4 Vict. c. 61. s. 1, and not the parish of Halifax. The rateable value of the house is ascertained by reference to the rate for the township, so a township may well be considered to be a place for the purpose of considering the amount of the population. By the 11 Geo. 4. and 1 Will. 4. c. 64. s. 32 (the interpretation clause), "the words 'parish or place' shall be deemed to include any township, hamlet, tithing, village, extra-parochial place, or any place maintaining its own poor."

the clock within any parish or place within the bills of mortality; or within any city, cinque port, town corporate, parish, or place, the population of which, according to the last parliamentary census, shall exceed 2,500, or within one mile, to be measured, as aforesaid, from any polling place used at the last election, for any town having the like population and returning a member, or members, to parliament, nor after ten of the clock in the evening elsewhere, nor at any time before one of the clock in the afternoon, nor at any time during which the houses of licensed victuallars, now are or hereafter shall be closed, on any Sunday, Good Friday, Christmas-day, or any day appointed for a public fast or thanksgiving; and if any such person shall keep his house open for selling beer or cider, or shall sell or retail beer or cider at any time, other than as hereinbefore prescribed and directed, such person shall forfeit the sum of 40*s.* for every offence, and every separate sale shall be deemed a separate offence."

(4) 6 B. & S. 617; s. c. 13 W. R. 939.

BLACKBURN, J.—I am sorry to say that I think the legislature had not sufficiently considered the nature of the different localities when they passed the 3 & 4 Vict. c. 61. By section 1, no license shall be granted to sell beer or cider by retail, under the Acts there recited, to any person "in respect of any dwelling-house which shall not, with the premises occupied therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place in which such house and premises are situate, on a rent or annual value of fifteen pounds per annum at the least, if situated in the cities of London or Westminster, or within any parish or place within the bills of mortality, or within any city, cinque port, town corporate, parish, or place, the population of which, according to the last parliamentary census, shall exceed ten thousand," &c. The legislature there say that the rent or annual value of the house on which it is rated by the parish, township, or place, where it is situated, is to regulate the granting of the license, but that that shall be 15*l.* by the least, in London and Westminster, &c., or within any city, cinque port, town corporate, parish, or place, the population of which is over ten thousand. As applied to parishes in the south of England, where the parishes and places are small, it may be good legislation to say we will not regard the small villages, hamlets, and places, but let the parish be the population area, but when applied to the north of England, where the parishes and places are so large as to be big enough for counties, as in the present instance, it is different, and probably the legislature would not have so enacted if they had considered the matter. If the inconvenience of this construction is great the legislature must remedy it. I think the population of the parish of Halifax must regulate the granting of this license, and not that of the township of Sowerby, and therefore the license in this case is void.

MELLOB, J.—I confess I entertain considerable doubt as to whether we are putting the true construction on this enactment, but my doubts are not sufficient to require me to differ from my brother Blackburn. I cannot but think the con-

struction is very inconvenient, but I follow his decision though reluctantly.

*Case remitted.*

Attorneys—Edwards, Layton & Jaques, agents for Holroyde & Smith, Halifax, for appellant; Emmets, Watson & Emmet, agents for Philbrich & Co., Halifax, for respondent.

[CROWN CASE RESERVED.]

1870.	}	THE QUEEN v. THE INHABITANTS OF THE UPPER HALF HUNDRED OF CHART AND LONGBRIDGE.*
April 30.		

*Bridge—Liability to Repair Hundred Bridge—Highway Act, 5 & 6 Will. 4. c. 50. s. 5.*

*A public bridge, repairable by immemorial custom by the inhabitants of a hundred, is not a highway within the meaning of the term highway in 5 & 6 Will. 4. c. 50. s. 5 (the Highway Act, 1835), and is not repairable, under that Act, by the parish in which it is situated.*

*By the General Highway Act, 5 & 6 Will. 4. c. 50. s. 5, it is enacted (inter alia) "that the word 'highways' shall be understood to mean all roads, bridges (not being county bridges), carriage ways, &c.":—Held, that a bridge of the above description was a county bridge, and repairable by the hundred, within the exception of county bridges.*

CASE reserved by the Chairman of the Kent Quarter Sessions.

At the general Quarter Sessions of the Peace, held at St. Augustine's, near Canterbury, on the 29th day of June, 1869, James Adams and Charles Tanton, as representing the inhabitants of the Upper Half Hundred of Chart and Longbridge, in the county of Kent, were tried upon an indictment which charged the said inhabitants with permitting one of the hundred bridges to be out of repair.

It was proved, to the satisfaction of the jury, that the bridge in question was situate within the Upper Half Hundred of Chart and Longbridge, that it was out of repair and dangerous, and that from time imme-

(\*) Coram Bovill, C.J., Willes, J., Byles, J., Hannen, J., and Cleasby, B.

morial the repairs of that bridge, and all other hundred bridges within the Upper Half Hundred, had always been done at the expense of the inhabitants of the Half Hundred, out of a hundred rate, made and levied in the said Upper Half Hundred. *Prima facie*, everything was proved which would entitle the Crown to a verdict. But it was contended, on the part of the defendants, that since the Highway Act, 5 & 6 Will. 4. c. 50, hundred bridges are repairable as highways by the parishes in which they are respectively situate, and that the inhabitants of any hundred, or other division of a county, are no longer indictable for the non-repair.

The jury found the defendants guilty, and the Court decided upon reserving the point raised for the consideration of the Court for Crown Cases Reserved, and respited the judgment until the decision should be given.

The opinion of the Court is requested upon the following question, namely,—

Whether a public bridge, which has from the time whereof the memory of man runneth not to the contrary, been repaired by a hundred is, since the Statute 5 & 6 Will. 4. c. 50, not repairable by the said hundred. If the Court shall be of opinion that it is repairable by the hundred the verdict is to stand, if otherwise, the verdict is to be set aside, and a verdict of not guilty entered.

*Byron*, for the defendants.—The parish in which this bridge is situated is liable to repair it, and not the hundred, since the Highway Act 5 & 6 Will. 4. c. 50. At common law, parishes were liable to the repair of their highways, but counties were liable to repair county bridges; but, by prescription, the repair of hundred bridges fell upon the hundredors. In stat. 43 Geo. 3. c. 59, the powers given by the prior Act of 13 Geo. 3. c. 78, to surveyors of highways, with respect to highways and bridges, under that Act were conferred upon the surveyors of county bridges. It is recited in that Act that the inhabitants of counties were by law bound to repair, &c., the public bridges commonly called county bridges; and in section 7 it is provided that nothing in that Act shall extend to persons liable to the repair of

bridges *ratione tenuræ*, or by prescription. The 54 Geo. 3. c. 90 recognises the distinction between county bridges and hundred bridges. Sect. 2 recites that it is expedient to extend the 43 Geo. 3. c. 59 to bridges and other works repaired by the inhabitants of hundreds and other general divisions of counties, and enacts that the said Act shall extend as well to bridges repaired by the inhabitants of hundreds, and other general divisions of counties, as to bridges repaired by the inhabitants of counties. Then the 5 & 6 Will. 4. c. 50 makes highways repairable by the parish; and in sect. 5 enacts that the word “highways” shall be understood to mean all roads, bridges (not being county bridges), carriage ways, cartways, &c.” Therefore, it is submitted that bridges repairable by hundredors by prescription are not county bridges, and are highways within the Act of 5 & 6 Will. 4. c. 50. County bridges and county bridges only are excepted out of that Act—*The Queen v. Inhabitants of Merionethshire* (1), and *The Queen v. The Inhabitants of Breconshire* (2). In the 55 Geo. 3. c. 143. s. 1, the 43 Geo. 3. c. 59 is recited, and power is given to surveyors of county bridges “and also to and for the bridge master, or all and every person or persons who may at the passing of this Act be under contract for the rebuilding or repairing of any public bridge built or repaired at the expense of the inhabitant of any such county, hundred or general division as aforesaid,” to get stones out of quarries in the county for their repair. In *Russell on Crimes*, 4th ed. by Greaves, vol. i. p. 544, it is said: “As parishes are bound to repair the public ways within their district, so the inhabitants of a county are *prima facie* and of common right liable to the repair of all public bridges within its limits, unless they can shew a legal obligation on some other persons to bear the burden. The Statute of Bridges shews that the burden is *prima facie* on the county, and it is exactly analogous to the liability of

(1) 6 Q.B. Rep. 343; s. c. 13 Law J. Rep. (N.S.) M.C. 158.

(2) 15 Q.B. Rep. 813; s. c. 19 Law J. Rep. (N.S.) M.C. 203.

the parish to repair a road. But a hundred or parish or other known portion of a county may by usage and custom be chargeable to the repair of a bridge erected within it."

[WILLES, J., referred to *Com. Dig. tit. Chimin*, b. 2, and to *Regina v. Kerrison* (3). BOVILL, C.J.—The term county bridges is not a legal term. In an indictment against the inhabitants of a county you do not describe the bridge as a county bridge *eo nomine*, but you state the circumstances which raise the liability to repair.]

*Barrow*, for the prosecution.—This bridge is a county bridge, and would be repairable by the county, if it were not, as it is by custom, repairable by the hundred. This is the first time this liability has been questioned since the passing of the 5 & 6 Will. 4. c. 50.

BOVILL, C.J.—Before the passing of the 5 & 6 Will. 4. c. 50, there had been one set of statutes applicable to highways, and another set of statutes applicable to bridges. The 5 & 6 Will. 4. c. 50 does not refer in any way to the statutes relating to bridges. In the interpretation clause (sect. 5) highways are to be understood to mean roads, bridges (not being county bridges), carriageways, cartways, horseways, &c., and it is now argued that under that clause, the term county bridge did not include a bridge repairable by a hundred. If we were dealing with special legal terms, there might be some foundation for that argument, but in reality, the term county bridge is only a compendious term for a public bridge. In an indictment for the non-repair of a bridge, the averments against the inhabitants of a county do not describe it as a county bridge. *Prima facie* the liability to repair public bridges in a county, is on the inhabitants of the county, but that liability may be cast on inhabitants of a hundred or other division of a county, or on a borough, or on certain persons. All public bridges, therefore, would be county bridges, though not repairable by the county at large. In the statute 43 Geo. 3. c. 49, the term, hundred bridges, does

not occur; then in 54 Geo. 3. c. 90, the officers of hundreds have authority extended to them which the county officers had before that Act. In the 55 Geo. 3. c. 143, it was necessary for the purposes of that Act to make the distinction between the two, but as respects highways there was no necessity to distinguish between the county bridges and hundred bridges. I think, therefore, that county bridges in the 5th section of the Highway Act, mean bridges *prima facie* repairable by the county, though by custom repairable by the hundred. The Highway Act (5 & 6 Will. 4. c. 50) consists of affirmative enactments, and contains nothing to take away liabilities expressly imposed by previous legislation. I therefore think the verdict was right and ought to stand.

The other judges concurred.

*Conviction affirmed.*

Attorneys—Kingsford & Dorman, agents for James Fraser, Ashford, for prosecution; Furley, Hallett & Creesy, Ashford, for defendants.

[CROWN CASE RESERVED.]

1870.	}	THE QUEEN v. KILHAM.*
May 7,		
June 4.		

*False Pretences*—Obtaining the use of a Horse—24 & 25 Vict. c. 96. s. 88.

By 24 & 25 Vict. c. 96. s. 88, whoever shall by any false pretence obtain from any other person any chattel, &c., with intent to defraud, shall be guilty of misdemeanour. To constitute an obtaining of a chattel, &c., within this section, there must, as in larceny, be an intention to deprive the owner wholly of his property, and merely to obtain the loan of a chattel by false pretences with intent, &c., is not within the section.

The prisoner, by false pretences, obtained from a livery stable keeper a horse on hire for a third person, rode it himself during the time of hiring and returned it to the stables afterwards:—Held, that a conviction for obtaining the horse by false pretences with intent, &c., was bad and must be quashed.

(\*) Coram Bovill, C.J., Willes, J., Byles, J., Hannen, J., and Cleasby, B.

CASE reserved by the learned recorder for the city of York.

James Kilham was tried before me at the last Easter quarter sessions for the city of York, on an indictment containing three counts, the first count of which was as follows: "City of York to wit. The jurors for our lady the Queen, upon their oath, present that James Kilham on the thirteenth day of March, in the year of our Lord one thousand eight hundred and seventy, in the city of York, unlawfully and knowingly did falsely pretend to Henry Burton, then being an ostler in the service of James Thackray and Edward Thackray, then keeping horses for hire in the city aforesaid, that he, the said James Kilham, was then sent by Mr. Hartley (thereby then meaning a son of Mr. Thomas Gibson Hartley, then living in Davygate in the said city) to order and obtain for hire a horse for him, the said first mentioned Mr. Hartley, to drive on a journey to Elvington, to be ready at half-past nine of the clock the next morning, by means of which said false pretences, the said James Kilham did then unlawfully obtain from the said Henry Burton, a certain horse of the goods and chattels of the said James Thackray and Edward Thackray with intent thereby them to defraud. Whereas in truth and in fact, the said James Kilham was not then sent by the said Mr. Hartley or any son of the said Mr. Thomas Gibson Hartley, then living in Davygate aforesaid, to order and obtain for hire a horse for him to drive on a journey to Elvington, to be ready at half-past nine of the clock the next morning, as he, the said James Kilham, well knew at the time when he did so falsely pretend as aforesaid." There were two other counts slightly varied in form but the same in substance.

The evidence on the part of the prosecution was that the prisoner had called at the livery stables of Messrs. Thackray, who were duly licensed to let out horses for hire, on the evening of the thirteenth of March last and stated to the ostler that he was sent by a Mr. Gibson Hartley to order a horse to be ready the next morning for the use of a son of Mr. Gibson Hartley, who was a customer of the Messrs. Thackray. Accordingly the next

morning the prisoner called for the horse, which was delivered to him by the ostler. The prisoner was seen in the course of the same day driving the horse, which he returned to Messrs. Thackray's stables in the evening. The hire for the horse, amounting to seven shillings, was never paid by the prisoner. Mr. Hartley and his son denied that they had authorized the prisoner to hire any horse for them, or that the prisoner had used the horse for any purpose of theirs. The prisoner was found Guilty, but I respited the sentence and admitted him to bail till the opinion of the Court for Crown Cases reserved could be taken.

I desire the opinion of the Court as to whether the prisoner could properly be found guilty of obtaining a chattel by false pretences within the meaning of the statute 24 & 25 Vict. c. 96. s. 88. The case of *Regina v. Boulton* (1), was relied on on the part of the prosecution.

No counsel appeared for the prisoner.

A. W. Simpson for the prosecution.—I admit that it is to be taken that the prisoner never intended to steal the horse, and the question, therefore, is whether goods which under the circumstances could not be the subject of larceny, can be the subject of false pretences. I submit that they can. There is no decision on the exact point. *Burn's Justice*, vol. 2, tit. Larceny, p. 276, says, "It is no objection that the moneys have been obtained only by way of a loan [*Regina v. Crossley* (2)] but perhaps this is true only of moneys, and not of other goods."

[WILLES, J.—Because money is a fungible (3)].

In *Regina v. Boulton* (1), it was held that a railway ticket was a chattel within 7 & 8 Geo. 4. c. 29. s. 53, and a conviction for obtaining by false pretences a ticket whereby the prisoner travelled free, was

(1) 1 Den. C.C. 508; 19 Law J. Rep. (N.S.) M.C. 67.

(2) 2 Moo. & R. 17.

(3) *Res fungibiles*, so called because *mutua vires funguntur*. See Sandar's Justin. lib. 3. tit. 14. In *Regina v. Burgon* (D. & B. 11) Crompton, J., says: "Where a chattel is lent, the chattel does not pass, but money that is lent passes as much in a case of loan as on a sale. There was no expectation that the same money which was obtained would be returned."



held good under that statute, though the ticket had to be returned to the company at the end of the journey. But Mr. Greaves, in a note to *Russell on Crimes*, 44th ed. vol. 2. p. 645, says: "This case was not argued. . . . The decision seems very questionable." In *Regina v. Morrison* (4), *Regina v. Boulton* (1) was commented on.

The words which constitute the offence of false pretences in 7 & 8 Geo. 4. c. 29. s. 53, do not differ from those in 24 & 25 Vict. c. 96. s. 88, except that the former statute says, "with intent to cheat or defraud any person of the same;" and the latter says only, "with intent to defraud."

The statute 33 Hen. 8. c. 1, was directed against persons deceitfully obtaining the possession of money, &c., by false tokens or counterfeit letters made in any other man's name. Then came 30 Geo. 2. c. 24. In *Pear's Case* (5) it is said that seven out of eleven Judges "held that neither of those statutes were intended to mitigate the common law, or to make that a less offence which was a greater before." The object of the modern statutes is to enlarge not to narrow the means of punishing cheats.

[WILLES, J.—Did any case arise under 33 Hen. 8. c. 1, which determined that it applied to the case of obtaining the use of a thing only by false tokens, &c. ?]

In a note to 2 East, P.C. 689, it is said that Eyre, B., adverting to 33 Hen. 8. c. 1, and 30 Geo. 2. c. 24, said, "he doubted if there were not a distinction in this respect between the owner's parting with the possession and with the property in the thing delivered. That where goods were delivered upon a false token, and the owner meant to part with the property absolutely, and never expected to have the goods returned again, it might be difficult to reach the case otherwise than through the statutes; *aliter*, where he parted with the possession only; for there, if the possession were obtained by fraud, and not taken according to the agreement, it was on the whole a taking against the will of the owner; and if done *animo furandi*, it was felony. MS. Buller, J."

(4) Bell C.C. 167; s. c. 28 Law J. Rep. (n.s.) M.C. 212.

(6) 2 East P.C. 689.

These distinctions as to what amount of property passed out of the owner are material only in larceny.

*Our. adv. vult.*

The following judgment was delivered (on June 4) by Bovill, C.J.—We are of opinion that the conviction in this case cannot be supported. The statute 24 & 25 Vict. c. 96. s. 88, enacts that "Whosoever shall by any false pretence obtain from any other person any chattel, money, or valuable security with intent to defraud, shall be guilty of misdemeanour." The word "obtain" in this section does not mean obtain the loan of, but obtain the property in any chattel, &c. This is to some extent indicated by the proviso that if it be proved that the person indicated obtained the property in such manner as to amount in law to larceny he shall not by reason thereof be entitled to be acquitted; but it is made more clear by referring to the earlier statute, from which the language of the 88th section is adopted. The 7 & 8 Geo. 4. c. 29. s. 53, recites that "a failure of justice frequently arises from the subtle distinction between larceny and fraud," and for remedy thereof enacts that "if any person shall by any false pretence obtain," &c.

The subtle distinction which the statute was intended to remedy was this, that if a person by fraud induced another to part with the possession only of goods, and converted them to his own use, this was larceny; while if he induced another by fraud to part with the property in the goods as well as the possession, this was not larceny.

But to constitute an obtaining by false pretences it is equally essential, as in larceny, that there shall be an intention to deprive the owner wholly of his property, and this intention did not exist in the case before us.

In support of the conviction the case of *The Queen v. Boulton* (1) was referred to. There the prisoner was indicted for obtaining by false pretences a railway ticket, with intent to defraud the company. It was held that the prisoner was rightly convicted, though the ticket had to be given up at the end of the journey. The reasons for this decision do not very clearly

appear; but it may be distinguished from the present case in this respect, that the prisoner, by using the ticket for the purpose of travelling on the railway, entirely converted it to his own use, for the only use for which it was capable of being applied. The conviction must therefore be quashed.

*Conviction quashed.*

Attorney—Robert Dale, York, for prosecution.

[CROWN CASE RESERVED.]

1870. }  
April 30. } THE QUEEN v. SMITH.\*  
June 4. }

*Receiving Stolen Goods—Partnership Goods—Larceny by Partner—24 & 25 Vict. c. 96. s. 91—31 & 32 Vict. c. 116. s. 1.*

*The effect of the 31 & 32 Vict. c. 116. s. 1, by which a partner or joint owner in goods is rendered liable to be convicted of stealing goods, in respect of which he is so jointly interested, is not to render the receiver of such goods, knowing the same to have been stolen by such partner, liable to be convicted as such receiver under the 24 & 25 Vict. c. 96. s. 91.*

*A. and B. were in partnership, and B., in fraud of the partnership, disposed of the goods of the firm to the prisoner, who knowingly received the same. The prisoner was indicted and convicted under the 24 & 25 Vict. c. 96. s. 91:—Held, that the conviction could not be supported.*

*Semble, that the prisoner might have been indicted and convicted as an accessory to or after the felony, either at common law or under 24 & 25 Vict. c. 94. ss. 1, 8 (1).*

\* Coram Bovill, C.J., Willes, J., Byles, J., Hannen, J., and Cleasby, B.

(1) The 31 & 32 Vict. c. 116. s. 1 enacts, If any person, being a member of any co-partnership, or being one of two or more beneficial owners of any money, goods, or effects, bills, notes, securities, or other property shall steal or embezzle any such money, goods, or effects, bills, notes, securities, or other property of or belonging to any such co-partnership or to such joint beneficial owners, *every such person* shall be liable to be dealt with, tried, convicted, and punished for the same, as if such person had not been or was not a member of such co-partnership or one of such beneficial owners.

The 24 & 25 Vict. c. 96. s. 91. enacts, "Who-

CASE reserved by a learned Commissioner of assize on the midland circuit.

Jesse Smith was indicted for receiving certain goods, the property of George Morton and another, knowing the same to have been feloniously stolen, and was tried before me at the last assizes for the West Riding of Yorkshire, at Leeds. The facts of the case were as follows:—George Morton was in partnership with one R. F. Martin at Leeds, and carried on business in that town as ironmongers, under the firm of "R. F. Martin & Co." The goods sold there were principally supplied by William Morton, of Birmingham, trading under the firm of Haines & Morton. In consequence of certain rumours as to the solvency of his firm, George Morton came to Leeds on the 13th of December, 1869, and made arrangements with his partner, R. F. Martin, to secure the debt due to Haines and Morton by giving a bill of sale of the goods then in the shop, and whilst this document was being prepared George Morton left Leeds and went to Sheffield. During his absence his partner, R. F. Martin, had interviews with the prisoner, and, before the return of George Morton, shut (on 14th of December) up the shop, and in the evening of the following day (15th of December) he hired drays, and in the presence of the prisoner conveyed the whole of the goods to the house of the prisoner (2), who apparently paid 100*l.* for them to R. F. Martin. The goods were proved to be worth considerably more than 300*l.*

From conversations with William Morton, the father of George Morton, it was evident that the prisoner was aware of the intended bill of sale, and that R. F. Martin was disposing of these goods in fraud of his partner, and to prevent the operation of the bill of sale.

It was objected on the part of the prisoner that even if it were proved that R. F. Martin had committed an act of felony

soever shall receive any chattel, money, &c., the stealing, taking, obtaining, &c., shall amount to a felony, either at common law or by virtue of this Act, knowing the same to have been feloniously stolen, taken, obtained, &c., shall be guilty of felony," &c.

(2) The prisoner was an auctioneer, and the goods were taken to his place as an auction room.

against his partner, under the provisions of 31 & 32 Vict. c. 116. s. 1, and that he had been guilty of larceny of the partnership goods, yet that the prisoner could not be indicted for receiving such goods, knowing them to be stolen, as that statute had not made such receiving a felony, and that under the provisions of the Larceny Consolidation Act, 24 & 25 Vict. c. 96. s. 91, only persons who received goods, the stealing of which amounted to a felony, either at common law or under the provisions of that Act, could be indicted as receivers, and as the stealing by a partner was not a larceny at common law, nor under the provisions of the Consolidated Act, no receiver of such goods could be indicted for a felony. As this was the first case that had occurred since the passing of the Act 31 & 32 Vict. c. 116, and thinking it more prudent that a point of such importance should be decided by a Court of Appeal, I declined to stop the case.

The jury finally found the prisoner guilty of receiving the goods, knowing them to be stolen, and I released the prisoner on good bail to appear at the next assizes, if necessary.

I have now to request the opinion of the justices of either bench, and the barons of the Exchequer, whether this prisoner has been properly convicted.

*Waddy (Wilberforce with him)* for the prisoner.—This conviction is wrong. The statute of 31 & 32 Vict. c. 116, does not apply to such a case as this. In a case on the Oxford circuit, *Martin, B.*, is reported to have said that the statute is intended to apply to large trading partnerships, such as limited companies, and not to joint ownership of chattels—*The Queen v. Talbot* (3). The first section of 31 & 32 Vict. c. 116, applies only to members of the partnership, and renders such person liable to be tried and convicted for larceny and embezzlement as if he were not a partner, but it does not extend to other persons or cases.

[*WILLES, J.*—The words are “every such person,” and not every person. There is no new species of offence created. The object is to bring certain persons within the operation of the criminal law.

It is not intended to create a new species of receiving.]

The 24 & 25 Vict. c. 96. s. 91, applies to the receiving of property stolen, &c., the stealing, &c., of which shall amount to a felony either at common law or by virtue of that Act. At the time of that Act such a fraud as this on a partner was not a felony either at common law or by that Act. Penal statutes must be construed strictly, and not so as to extend them beyond the words of the enactment or to offences not in existence at the time of the passing of the Act—*Dwarris on Stat.* p. 634, *Re v. Handy* (4).

[*BYLES, J.*—In the 2nd section of the 31 & 32 Vict. c. 116, where the 18 & 19 Vict. c. 126, is extended to embezzlement, it is provided that “the said Act shall henceforth be read as if the said offence of embezzlement had been included therein.” Those words are not used in the first section.]

*Hawk. P.O.* bk. 1. c. 7. ss. 5, 6, was also referred to.

*Campbell Foster* for the prosecution.—The effect of the 31 & 32 Vict. c. 116. s. 1, was to make the offence of *Martin* a larceny. Larceny was an offence at common law known at the time of the passing of the 24 & 25 Vict. c. 96. s. 91. Again, *Martin* having been made liable to be convicted of larceny by the 31 & 32 Vict. c. 116, was guilty of larceny as a bailee under 24 & 25 Vict. c. 96. s. 3, and therefore was guilty of an offence against that Act. He was also liable to be convicted of stealing in a dwelling-house, under 24 & 25 Vict. c. 96. s. 60.

*Our. adv. vult.*

The following judgment was now (on June 4) delivered by—

*BOVILL, C.J.*—The prisoner was convicted for feloniously receiving stolen goods, knowing them to have been stolen *contra formam statuti*. There was no count charging the prisoner as accessory either before or after the fact. The statement of facts shews evidence of a receipt of goods stolen by one partner of the firm, with knowledge of their being so stolen. It further states facts which might perhaps have been relied upon to

(3) *Law Times* 494, April 23, 1870.

NEW SERIES, 39.—MAG. CAS.

(4) 6 Term Rep. 286.

Q

sustain a charge of being simple accessory to the felony, if the indictment had contained a count to that effect. We must, however, deal with the only question raised, viz., whether the conviction upon the special charge of feloniously receiving stolen goods can be sustained. The 91st section of 24 and 25 Vict. c. 96, creates the felony charged in these terms "whosoever shall receive any chattel, &c., the stealing, &c., whereof shall amount to a felony either at common law or by virtue of this Act, knowing the same to have been feloniously stolen, &c., shall be guilty of felony, and may be indicted and convicted either as an accessory after the fact or for a substantive felony, and shall be liable, at the discretion of the Court," to a maximum sentence of 14 years' penal servitude.

At the time that Act (24 & 25 Vict. c. 96) was passed, theft by a partner of the goods of his firm did not fall within the criminal law either common or statutory. This defect was supplied by 31 & 32 Vict. c. 116, which, after reciting that it is expedient to provide for the better security of the property of copartnership and other joint beneficial owners against offences by part owners thereof and further to amend the law as to embezzlement, proceeds to enact by the first section that if a partner, or one of two or more beneficial owners, shall steal, &c., any property of such copartnership or such joint beneficial owners, every such person shall be liable to be dealt with, tried, convicted, and punished for the same as if such person had not been or was not a member of such copartnership, or one of such beneficial owners. This enactment is therefore limited in words to the fraudulent partner, and does not directly extend to third persons who deal with the property, though in collusion with such partner. In order to reach such person, either the law as to accessories must be resorted to or it must be shewn that the 24 & 25 Vict. c. 96. s. 91, is extended by implication to be read as incorporated in the 31 & 32 Vict. c. 116.

As to the law of accessories we do not suggest any doubt that if a statute creates a felony or misdemeanour, it by implication forbids counselling, aiding, or abetting the

offence. This is now provided for in language strongly contrasting with that of the 24 & 25 Vict. c. 96. s. 91, as to felony, by 24 & 25 Vict. c. 94, s. 1, that, "whosoever shall become an accessory before the fact to any felony, whether the same be a felony at common law or by virtue of any Act passed, *or to be passed*, may be indicted, tried, convicted, and punished in all respects as if he were a principal felon." The case of accessories after the fact is provided for in like prospective terms by section 3. Also as to misdemeanours by section 8: "Whosoever shall aid, abet, counsel, or procure the commission of any misdemeanour, whether the same be a misdemeanour at common law or by any Act passed, *or to be passed*, shall be liable to be tried, &c., as a principal offender." And apart from these enactments the common law would have supplied a remedy, though without the statutory facilities of procedure. As already pointed out, however, the conviction of the prisoner is not as of a simple accessory, whether before or after the fact, and it cannot be sustained upon that footing.

The question, therefore, depends upon whether the 24 & 25 Vict. c. 96. s. 91, is extended by inference or implication to the present case. If not, the conviction was wrong, because at the common law receivers of stolen goods, unless they likewise received and harboured the thief, were guilty of a bare misdemeanour for which they were liable to fine and imprisonment (*Foster's Crown Law*, p. 373), and there could not be a conviction for a misdemeanour upon the present indictment for felony.

The subject of extending statutes by inference to include cases not originally contemplated is one which has given rise to several decisions, the leading characteristic of which is that the earlier statute deals with a genus, within which a new species is brought by a subsequent Act. Thus, *choses in action* were not originally within 13 Eliz. c. 5, against fraudulent conveyances, that statute being applicable only to property which could be taken in execution, *Sims v. Thomas* (5); but as to *choses in action* made subject to execution (5) 12 Ad. & E. 536; s. c. 9 Law J. Rep. (n.s.) Q.B. 399.

by 1 & 2 Vict. c. 110, there can be no doubt that by the conjoint operation of that Act and the 13 Eliz. c. 5, such *choses in action* having become by new enactment a species of the genus property subject to execution, did, without any express enactment to that effect in the later statute, become subject to the operation of the former Act—*Norcutt v. Dodd* (6), *Barrack v. McCulloch* (7). So that if the 24 & 25 Vict. c. 96. s. 91, is to be read as a general enactment that for the future any person receiving goods stolen with a guilty knowledge that they were stolen, should be liable to be indicted for felony as a receiver, the subsequent statute having introduced a new species of larceny, it might have been contended that the general provision as to receiving in the former statute was by inference extended to the new species of larceny. There are, however, several difficulties in the way of arriving at that result upon the construction of 24 & 25 Vict. c. 96—first, the express words of section 91, “either at common law or by virtue of this Act”; secondly, the fact that the statute *in pari materia* as to accessories does expressly refer to acts “to be passed”; thirdly, the character of the extending enactment, 31 & 32 Vict. c. 116, which deals not so much with property or acts of a particular species as with a class of persons whom it specifies, and against whom only it is in terms directed, namely, partners and part owners, and that the effect is to create a new class of offenders; fourthly, the rule peculiarly applicable to the elaborate criminal legislation of which the statutes under consideration form a part against extending penal enactments by construction. This latter rule may be illustrated by reference to the statute 31 Eliz. c. 12. s. 5, which took away benefit of clergy from an accessory in horse stealing; upon which it was held that the enactment extended only to such persons as were in judgment of law accessories at the time the act was made, namely, accessories at common law, and not to such as are made accessories by subsequent statutes; and therefore a person knowingly receiving a stolen horse, though made an accessory

(6) 1 Cr. & Ph. 100; s. c. 10 Law J. Rep. (N.S.) Chanc. 296.

(7) 26 Law J. Rep. (N.S.) Chanc. 105.

by subsequent statutes, was held not to be ousted of the benefit of clergy by the statute of Elizabeth (*Foster*, p. 372).

Upon these grounds we think that the statute 24 & 25 Vict. c. 96. s. 91, cannot be extended by construction so as to include a receiver of property stolen by a partner, so as to make such receiver liable in the discretion of the Court to the graver punishment of fourteen years' penal servitude thereby imposed; as the prisoner would be if this conviction were sustained, a circumstance which makes the authority cited from *Foster* especially applicable.

The conviction must therefore be quashed.

*Conviction quashed.*

Attorneys—Williamson, Hull & Co., for prosecution.

[CROWN CASE RESERVED.]

1870. }  
June 4. }

REGINA v. BUTTLE.\*

*Perjury — Evidence — Corrupt Practices Prevention Acts*—26 Vict. c. 29. s. 7—*Protection of Witness.*

By the 26 Vict. c. 29. s. 7, no person called before Commissioners of inquiry under the *Corrupt Practices Prevention Acts* shall be excused from answering any question relative to any corrupt practices at the election under inquiry on the ground that the answer may tend to criminate himself; and if any information, &c., should be at any time thereafter pending in any Court against such witness for any offence under the *Corrupt Practices Prevention Acts*, committed by him previously to the time of giving his evidence, the Court should, on production of a certificate given to him by the Commissioners, stay the proceedings in such information, &c., and may award the witness his costs. “Provided that no statement made by any person, in answer to any question put by or before such election committee or Commissioners, shall, except in cases of indictments for perjury, be admissible in evidence in any proceeding, criminal or civil.” A witness before such a Commission of inquiry was, after giving his evidence before it, indicted for perjury com-

\* *Coram Kelly, C.B., Martin, B., Blackburn, J., Montague Smith, J., and Meller, J.*

*mitted before a judge, on the trial of an election petition in respect of the same election with reference to which he was examined before the Commissioners. Statements made by such witness, in answer to questions put by the Commissioners relative to corrupt practices at such election, were given in evidence against him to prove the indictment for perjury:—Held, that the exception in the proviso to 26 Vict. c. 29. s. 7, as to cases of indictments for perjury, must be considered to mean perjury committed in answers to questions put by the Commissioners on the inquiry, and not to perjury generally, and therefore that the above evidence was not admissible.*

Case reserved by KELLY, C.B.

The prisoner was indicted at the last assizes for the county of Somerset for perjury alleged to have been committed at the trial of an election petition in respect of the borough of Bridgewater, before Mr. Justice Blackburn.

The perjury assigned was "that he had not received money for his vote," and "that he had not received ten pounds for his vote."

Evidence was given of his having been seen in a passage, and at the door of a room in which money was given to several voters for their votes by a person named Allan. And it is possible that with this evidence, though it was by no means conclusive, a conviction might have been obtained. But the counsel for the prosecution then proceeded to prove that upon a Commission to inquire into the existence of corrupt practices at the election in question before certain Commissioners the prisoner was examined as a witness upon oath, and admitted upon such examination that he had received ten pounds for his vote at the election in question, and he further admitted in express terms that he had sworn falsely upon the trial of the election petition before Mr. Justice Blackburn.

It was contended by the counsel for the prisoner that this evidence was not admissible, and that the exception in relation to perjury in the 26 Vict. c. 29. s. 7, applied only to perjury committed before the Commissioners under the Commission, and not to perjury committed upon the

trial of the election petition, the judgment or report upon which petition had led to the Commission of inquiry. Inasmuch as it was clear that the prisoner had been compelled under peril of commitment and imprisonment to give evidence before the Commissioners, and consequently, that the evidence which he so gave, and which was perfectly true, was obtained from him by compulsion, if it could be used in evidence against him on a criminal charge, the rule of law that no man is bound to criminate himself would be at once nullified and defeated.

I therefore thought it right to reserve the point whether such evidence was admissible for the consideration of the Court of Appeal. If inadmissible, the verdict of guilty is to be set aside, and a verdict of acquittal entered.

*Saunders* for the prisoner.—The statements made by the prisoner before the Commission of inquiry were inadmissible in evidence against him. The protection afforded by the proviso to the 26 Vict. c. 29. s. 7 (1), would have been general but

(1) By 26 Vict. c. 29. s. 7, "No person who is called as a witness before any election committee, or any Commissioners appointed in pursuance of the Act, 15 & 16 Vict. c. 57, shall be excused from answering any question relating to any corrupt practice at, or connected with, any election forming the subject of inquiry by such committee or Commissioners, on the ground that the answer thereto may criminate or tend to criminate himself: Provided always, that where any witness shall answer every question relating to the matter aforesaid, which he shall be required by such committee or Commissioners (as the case may be) to answer, and the answer to which may criminate or tend to criminate him, he shall be entitled to receive from the committee under the hand of their clerk, or from the Commissioners under their hands (as the case may be), a certificate stating that such witness was, upon his examination, required by the said committee or Commissioners to answer questions or question relating to the matters aforesaid, the answers or answer to which criminated or tended to criminate him, and had answered all such questions or question; and if such information, indictment, or action be at any time thereafter pending in any Court against such witness for any offence under the Corrupt Practices Prevention Acts, or for which he might have been prosecuted against under such acts committed by him previously to the time of his giving his evidence, and at or in relation to the election concerning or in relation to which the witness may have been so examined, the Court shall, on production and proof of such certificate, stay the proceedings in such last-mentioned infor-

for the exception, which is, "except in cases of indictments for perjury." This must be read with a view to carry out the intention of the Act which was to obtain the fullest information on the inquiry by Commission. That object was to ascertain the extent of corruption in the borough, and therefore the fullest protection was given so long as the witness told the truth before them, and it was only in a case of perjury before them that his protection was given. Therefore the protection must be confined to perjury before the Commissioners, and his statements only in such case are admissible against him, and not made admissible to prove that at another time he may have stated what was not true.

*Poole* for the prosecution.—The exception to this proviso was intended by the legislature to have the wider signification so as to extend to perjury committed on any occasion whatsoever. They did not intend to confine the exception to perjury committed in answers before the Commissioners. When the legislature so intended they knew how to express themselves, and in the 15 & 16 Vict. c. 57. s. 8, which is *in pari materia*, the proviso is that "no statement made by any person in answer to any question put by such Commissioner shall, except in cases of indictment for perjury committed in such answers, be admissible in evidence in any proceeding, civil or criminal." This statute is referred to in section 7 of 26 Vict. c. 29, and must have been present to the mind of those who framed the latter Act, and as the words have been altered, it must have been intended that the meaning is altered in accordance with them. The object of the change of language may have been to strengthen the hands of the judge who tried the election petition, by leaving the liability to punishment of perjury to attach to persons who committed perjury before him.

mation, indictment, or action, and may, at its discretion, award to such witness such costs as he may have been put to in such information, indictment, or action: Provided that no statement made by any person in answer to any question put by or before such election committee or Commissioners shall, except in cases of indictments for perjury, be admissible in evidence in any proceeding, civil or criminal."

[BLACKBURN, J.—Instead of the object being to give complete immunity, it may have been merely to exclude his own statements as evidence against him.—MARTIN, B.—Does not the maxim *nemo tenetur seipsum accusare* apply here? The common law without the aid of this proviso would be a sufficient protection.]

No. In the absence of such a proviso there would be no protection—*Regina v. Scott* (2), *Regina v. Skeen* (3).

KELLY, C.B.—I am of opinion that this verdict should be set aside. Let us inquire what was the spirit and meaning of this Act of Parliament. It enables certain Commissioners to put questions to individuals touching matters of election, and in execution of their powers they may compel witnesses to answer such questions as they may think fit to put. The legislature has, in effect, said, the witness must answer the questions put, and compels him to do so, but says that if he answers, and that truly, and in so doing exposes himself to a prosecution for bribery or any other act, the Court shall stay the proceedings, and further, any evidence he may give on this occasion shall not be given in evidence against him, but if he answer untruly before them, then he shall have no protection, for he may be indicted for perjury. To say that it was intended that a man should be compelled to answer, and if he answers truly, and thereby furnishes evidence against himself, which may be used against him, is to put powers in the hands of the Commissioners entirely subversive of the maxim of the Common Law, *nemo tenetur seipsum accusare*. Not only am I of opinion that the above is the plain meaning of the statute, but had it been otherwise I think the legislature would have intended a grievous wrong.

But it is said that in a statute *in pari materia* the legislature have used words which, if they had been introduced into the section now under discussion, would have expressed clearly that they intended to give the protection we think they have given without those words, and

(2) 25 Law J. Rep. (N.S.) M.C. 128.

(3) 28 Law J. Rep. (N.S.) M.C. 91.

it is urged that the omission of those words was designed, and with a view to remove the protection; but the framers of statutes sometimes do not sufficiently consider what the state of the law actually is at the time they are choosing their language, and as we think the words were not absolutely necessary and the meaning of the section is sufficiently plain without them, I do not attach weight to that argument.

MARTIN, B.—We are asked to construe the proviso to this section, so as to say that in all indictments for perjury, statements obtained from witnesses by Commissions in inquiries under the powers of this statute, are to be admissible against him. The maxim of the Common Law is that *nemo tenetur seipsum accusare*, but then the statute law intervenes and says that he shall be bound to give his evidence, but he shall be protected from any evil consequences resulting therefrom and arising out of proceedings, civil or criminal, against him. And I construe this enactment to give effect to that intention.

BLACKBURN, J.—The Common Law says that any person may refuse to answer any question which tends to criminate him, but the legislature here takes away that power or privilege, but then the proviso is, that no statement made by any person in answer to any question put by or before such Commissioners, shall, except in cases of indictments for perjury, be admissible in evidence in any proceeding, criminal or civil. The enactment of the proviso is therefore general, but out of it are excepted cases of indictments for perjury. It is said the exception is also general. If so, however, it would be contrary to the spirit and scope of the rest of the clause; and I think it must be construed so as to confine it to indictments for perjury committed in respect of answers given under this Act. That would seem to give effect to the intention of the Act, but in answer to that, the difference in the language of 15 & 16 Vict. c. 57. s. 8, is pointed out. The present section appears to have been remodelled and altered in its frame, and the words "committed in such answers," are left out. It is urged that the words were left out intentionally, and with a view to restrict the immunity previously enjoyed, but I do not think

they were left out by the legislature with such intention. They may have thought that the words were superfluous, and so rejected them.

MELLOR, J. and MONTAGUE SMITH, J., concurred.

*Conviction quashed.*

Attorneys—Torr, Janeway, Tagart & Janeway, agents for J. H. B. Carslake, Bridgewater, for prosecution; H. A. Reed, agent for Reed & Cook, Bridgewater, for prisoner.

[CROWN CASE RESERVED.]

1870. }  
April 30. } THE QUEEN v. KAY.\*  
June 4. }

*Forgery—Warrant, Authority, or Request for the Payment of Money—Building Society—Receipt of Depositor—24 & 25 Vict. c. 98. s. 24.*

A building society was in the habit of taking money on deposit at interest, and upon repaying such deposit required, a receipt to be given by the depositor for the amount repaid. The prisoner was convicted of forging one of such receipts, which was in the following form—"Received of the South Lancashire Building Society the sum of 417l. 13s. on account of my share, No. 8071, pp., Susey Ambler, William Kay." Susey Ambler was the depositor, and the prisoner a local agent of the society. By the custom of the society such a document was treated as an authority, warrant, or request to pay the deposit, but not as an order:—Held, that the above document might be described in the indictment as a warrant, authority, or request for the payment of money by procuration within the meaning of the 24 & 25 Vict. c. 98. s. 24 (1).

\* Coram Bovill, C.J., Willes, J., Byles, J., Hannen, J., and Cleasby, B.

(1) The 24 & 25 Vict. c. 98. s. 24 enacts, "Whosoever with intent to defraud shall draw, make, sign, accept, or endorse any bill of exchange, or promissory note, or any undertaking, warrant, order, authority, or request, for the payment of money or for the delivery or transfer of goods or chattels, or of any bill, note, or other security for money, by procuration or otherwise, for, in the name, or on the account, of any other person, without lawful authority or excuse, or shall offer, utter, dispose of or put off, any such bill, note, undertaking, war-



CASE stated by a learned Commissioner of assize of the midland circuit.

William Kay was indicted for feloniously making by procuration in the name of one Susey Ambler a security for money, to wit 417l. 13s., without lawful authority or excuse, with intent to defraud. In the second count he was charged as in first count, except that it was stated that he made the security without the lawful authority of the said Susey Ambler; the third and fourth counts were as the first and second, except that the document was described as a "warrant;" the fifth and sixth counts were as the first and second, but the document was described as an "order;" the seventh and eighth counts were also as the first and second, but the document was described as an "authority for the payment of money;" the ninth and tenth counts were also as the first and second, but the document was described as a "request for the payment of money." In ten other counts the prisoner was charged with feloniously signing by procuration like documents as in the other counts *mutatis mutandis*, and was tried before me at the last assizes for the West Riding of Yorkshire, at Leeds. The document forming the subject of the indictment was in the following form:—

Thornton, October, 1867.

Received of the South Lancashire Building Society the sum of 417l. 13s. on account of my share, No. 8071.

pp. Susey Ambler,

417l. 13s.

Wm. Kay.

The prisoner was the local agent at Thornton of a society called "The South Lancashire Permanent Building Society," the head office of which was at Manchester. The society carried on a large business, and was in the habit of taking money on deposit for fixed periods at various rates of interest, but if circumstances were favourable, and the funds of the society

rant, order, authority, or request so drawn, made, signed, accepted, or endorsed by procuration or otherwise, without lawful authority or excuse, as aforesaid, shall be guilty of felony; and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

flourishing, no objection was made to repay money lent on deposit at a date earlier than that originally agreed on, if the depositor gave one month's notice of an intention to withdraw the whole or a part of a deposit.

Susey Ambler was a depositor in the society, and in August, 1866, she lent to the society, through the prisoner, 460l. for two years, at interest, and received from the prisoner a deposit note for that sum signed by him as agent. In August, 1868, the prisoner informed Mrs. Ambler that the sum of 41l. 8s. was due to her as interest on her loan of 460l. She, however, told him that he was to pay her the 1l. 8s. and put the balance, 40l., to her loan account; he then promised to do so, and obtained from her the receipt he had given her, and afterwards gave her an accountable receipt for 500l. at interest signed by him as agent for the society. In October, 1867, the prisoner sent to the secretary of the society at Manchester the document on which the indictment was founded, and at the same time forwarded his monthly statement of accounts, in which he debited himself amongst other sums with 750l. received from the secretary, and credited himself amongst other payments with a payment to Susey Ambler, 8071, of the sum of 417l. 13s.

The secretary of the society absconded in 1868 or 1869, and on examination of the accounts of the society, a large deficit was discovered.

The present secretary, W. Wadsworth, was called as a witness for the prosecution, and he proved that if a depositor at a fixed date wished to withdraw the whole or any part of his deposit, a notice of one month was required by the society's rules, but he did not know whether or not that rule had not been frequently dispensed with; he proved that it was the custom of the agents to write to the secretary at Manchester each month, sending in an account of the probable withdrawals of money for which the agent had or ought to have had notice, and that the secretary thereupon sent down to the agent sufficient funds for that purpose; he also proved that in the books of the society it appeared that the sum of 417l. 13s. had been paid in October, 1867, to Susey Ambler, and produced

the receipt before mentioned. He stated that he had carefully searched through the documents, but could find no order for the payment for that sum signed by Susey Ambler, or any document relating to that payment, except the monthly account and the receipt; nor could he find any letter from the agent giving notice that Susey Ambler required a return of a portion of her deposit. He stated that receipts were required, and that it was the duty of the agents not to pay without receipts, and to forward the receipts to the office when the sums would be properly entered in the books of the society.

He also proved that the prisoner was a director of the society in the years 1868 and 1869.

It was objected on the part of the prisoner that, under the provisions of the Forgery Consolidation Act, 24 & 25 Vict. c. 98. s. 24, this indictment must fail, for that the document produced was only a receipt for money paid, and that the word "receipt" was not to be found in that section. And that it was clear from the evidence that the money was paid to the prisoner by the secretary before the receipt was handed over by him. I declined to stop the case on the authority of *The Queen v. Raake* (2), *The Queen v. Ittidge* (3), and *The Queen v. Pulbrook* (4), and intimated to the counsel for the prisoner that if the jury were of opinion that by the custom of the society a document like that produced was treated as an authority or request to pay money, I was of opinion that the indictment was good. The counsel for the prisoner thereupon addressed the jury, contending that there was nothing proved which could justify them in saying that the society had ever treated such documents as anything else than simple receipts for money previously paid. I then summed up the case and told the jury that if they were of opinion, from the whole of the facts proved, that the society had recognised such documents as an order or as an authority or as a request to pay money, they should find the prisoner guilty, and that they might take into their con-

sideration the fact that in this case no order or authority or request from Susey Ambler, or pretending to be signed by her, had been discovered amongst the papers of the society. The jury returned a verdict of guilty, saying that by the custom of the society such documents were treated as an "authority to pay," and as a "warrant to pay," and as a "request to pay," but not as an "order." I then directed a verdict of guilty on the counts wherein the document was described as a "warrant," "authority" or request," and discharged the prisoner on good bail to surrender and receive judgment at the next assizes if necessary. And I have now to request the opinion of the Justices of either Bench, and the Barons of the Exchequer, whether, under the circumstances proved at the trial, the document in question can be held to be a "warrant," or an "authority" or a "request to pay money."

No counsel appeared.

*Our. adv. vult.*

Judgment was now (on June 4) delivered by

BOVILL, C.J.—We are of opinion that the conviction in this case was right. The jury found that documents, such as that in question, were by the custom of the society treated as "an authority to pay," as a "warrant to pay," and as "a request to pay" money. We think there is no objection in law to its being so treated. In *Morrison's case* (5), it was held that a pawnbroker's ticket might be treated as a warrant for the delivery of the goods. In *Allen v. The Sea Fire and Life Assurance Company* (6), it was held that a credit note, signed by the directors and addressed to the cashier of a company, might be declared upon as a promissory note of the company, and we think that the document in this case might properly be described as a "warrant," an "authority," or "a request to pay" money, and that the conviction must be affirmed.

*Conviction affirmed.*

(2) 2 Moo. C.C. 126.  
(3) 1 Den. C.C. 404; s. c. 18 Law J. Rep. (n.s.) M.C. 179.  
(4) 9 Car. & P. 37.

(5) Bell C.C. 158; s. c. 28 Law J. Rep. (n.s.) M.C. 210.  
(6) 9 Com. B. Rep. 574; s. c. 19 Law J. Rep. (n.s.) C.P. 305.

[IN THE COURT OF QUERN'S BENCH.]

1870. { THE COMMISSIONERS FOR IMPROVING THE HARBOUR OF  
 April 30. { NEW SHOREHAM (*appellants*) AND THE CHURCHWARDENS AND  
                   { OVERSEERS OF LANCING (*respondents*).

*Poor Rate—Occupation—Port—Harbour—Tidal River Piers.*

*By an Act of Parliament certain Commissioners (the appellants) were appointed for effecting improvements in the harbour of S. They were authorised and required to deepen and cleanse the channel of the harbour, and to make an artificial entrance with piers, by which ships might pass from the sea into the harbour. Tolls were to be paid in respect of such vessels as entered the harbour, but were not to be received by the appellants to the full amount authorised by the Act until the whole works were completed. The piers were erected, and the channel deepened and cleansed, and the Commissioners received tolls in respect of the vessels which entered the harbour. There was nothing in the Act to shew that they were to be considered as purchasers or owners of the land upon which the works were to be done :—Held, first, as to the channel, that the Commissioners had simply a power to make a right of passage from the sea to the harbour, and that they were not rateable to the poor rates in respect of such right of passage; secondly, that, although they were occupiers of the land upon which the piers stood, yet that the occupation could not be taken to be enhanced in value by the revenue derived from the tolls, inasmuch as an occupier of the piers would get no part of the tolls, or derive any benefit from the harbour, and therefore that the appellants were not liable to be rated to the poor rates, the piers themselves being worth nothing.*

CASE stated by order of a judge and by consent, substantially as follows :—

The appellants are the Commissioners for carrying into execution an Act of Parliament, namely, 56 Geo. 3. c. 81, entitled, "An Act for the more effectual security and improvement of the harbour of New Shoreham, in the county of Sussex," passed in 1816.

NEW SERIES, 39.—MAG. CAS.

The respondents are the parish officers of Lancing, in the county of Sussex.

The respondents made a poor rate for the parish of Lancing dated the 10th of September, 1868, in which they charged the appellants as "occupiers" and "owners" of New Shoreham harbour, works, tolls, and dues, on a gross estimated rental of 4,500*l.* and a rateable value of 4,000*l.*, and the sum of 100*l.* as a rate of 6*d.* in the pound.

Against this rate the appellants gave notice of appeal, and the following are the only grounds of appeal necessary to be stated for the purposes of this case, viz.,—

That the Commissioners are not the occupiers of the harbour, works, or other tenements in respect whereof they are in the rate or assessment rated.

That the harbour, works, tenements, tolls, and dues respectively are not rateable to the relief of the poor of the parish.

That the Commissioners are not rateable to the relief of the poor in respect of the harbour, works, tenements, tolls, and dues respectively.

The appeal had been duly entered and respite by consent, and it was admitted that the rate was duly signed and published, and that all formal notices on both sides had been duly given.

1. By an Act of 33 Geo. 2. c. 35 passed in 1759, certain Commissioners were appointed to make a new cut through the sea-beach opposite the village called Kingston-by-Sea, about a mile to the eastward of the town of New Shoreham, and to erect a pier or piers, and to do such other works as should be necessary in order to make and maintain a new and more commodious entrance into the harbour.

2. The various works authorised by the Act were made and executed by the Commissioners, and by section 2, the right and property of all and every the piers and all other works executed in pursuance of the Act, and the property of the ground whereon such piers and works were erected, as well as all such right and property as then belonged and appertained to the harbour of New Shoreham, were thereby vested in the Commissioners.

3. By an Act of 29 Geo. 3. c. 21, passed in 1789, for the purpose of reducing the tolls, authorised by the Act of 1759, it

R

was amongst other things recited (as the fact was) that for the purposes of the Act of 1759, piers had been erected, and a new cut made, but that from various causes the channel took a different direction and then ran into the sea, near half a mile to the eastward of the place where the piers were erected; and that the piers had been washed away, and no other works had since been erected, but that the harbour was then in as good a state as it had usually been for many years past.

4. The new channel referred to in the Act of 1789, as near half a mile to the eastward of the original cut authorised by the Act of 1759, afterwards, from various causes, became stopped up, and in 1816, the channel or entrance to the harbour was about a mile to the east of the new entrance, made under the authority of the Act of that year, hereinafter set forth, being the Shoreham Harbour Act, now in force, and by which the appellants are constituted commissioners to carry the same into execution.

5. By the Act of 1816, section 17, the commissioners are authorised to sue and be sued in the name of their clerk or treasurer for the time being.

6. By section 26 of the Act of 1816, the right and property of all the wharves, quays and buildings, and of all timber, iron work, wood and stone, and other materials there, belonging to the commissioners under the herein recited Acts or either of them, or to be purchased for any of the purposes of the present Act, and the property of all and every the works erected in and about the harbour, in pursuance of such Acts, or of the present Act, are vested in the commissioners for the time being.

7. By section 27 of the Act of 1816 the limits of the harbour are defined as extending from Old Shoreham Bridge to the Wish, and 160 yards on the west side of the then intended (and since constructed) western pier, and 160 yards on the east side of the then intended (and since constructed) eastern pier, and extend to the flow of the high water and spring tides on the north and south sides of the harbour from the Wish to Old Shoreham Bridge (save and except the marshes or waste lands lying on either side of the

harbour, between the west end of the town of New Shoreham and Old Shoreham Bridge), and by the same section the commissioners are authorised and required to deepen, cleanse, scour and enlarge the channel of the harbour within the limits (which they did) and to make a new pier or piers, with the necessary wharfing, to confine the channel opposite to and near the then intended (and since constructed) entrance into the harbour, which they were thereby required to open, and from time to time to amend or improve as they might see expedient, and also to make the necessary dams, sluices, platforms and other works in the eastern division of the harbour for the purpose of sluicing it, and also such works as should be found requisite to accelerate the closing up of the then entrance of the harbour, and likewise to construct a dredge boat for removing shoals within the limits, and to construct lighthouses, storehouses, storeyards and other buildings, and to make and effect such other works within the limits as should be necessary for improving and preserving the navigation of the harbour, and the use thereof by the persons trading thereto, and to effect various other works as in the section expressed (1).

9. The limits of the port of New Shoreham are much larger than the limits of the harbour, and extend to the parish of Rottingdean on the east, and the parish of Herne on the west, and comprise a sea frontage of about 16 miles.

10. By section 55 of the Act of 1816,

(1) The section also gave powers to "get, dig, take and carry away soil, sand, clay, stones, rock, gravel and other materials proper, requisite and convenient for making, carrying on, altering and continuing the said works and undertakings, in or from any ground of any person or persons, or any waste lands adjoining, or lying contiguous to the said harbour, within the limits aforesaid (not then being the ground whereon any house stands, nor having been for the space of twelve calendar months then next immediately preceding, an orchard, pleasure ground or planted walk, or avenue to a house, and except as hereinbefore mentioned), and also to do and perform all other works, matters and things which shall be necessary or proper for rendering the said harbour safe and commodious, and for executing the purposes of this Act; they, the said commissioners, and the other persons hereby empowered to perform the said works and things,

and by other sections, the commissioners are authorised to purchase land for the purpose of improving the harbour, but these powers have never been exercised, nor has any purchase of land or hereditaments been made by the commissioners except a way in the parish of Kingston-by-Sea to the lighthouse, for the purchase of which 5*l.* was paid.

11. Section 78 provides for the subscription and application of 40,000*l.*, and for the annual dividing among subscribers of the money remaining in the hands of the commissioners, together with rates and duties to be received in each year.

13. Section 83 of the Act of 1816 enacts that from and after the whole of the piers, dams, sluices and other works thereby authorised to be made, should be made and completed, there should be paid by every person who should lade or unlade, or import or export any grain, seeds, goods, wares, merchandises, baggage, parcel, or other article, matter or thing whatsoever, within the limits of the port of New Shoreham, the several rates and duties contained and set forth in schedule B. annexed to the Act; and sect. 84 empowers the commissioners to fix reasonable rates upon the lading, unlading, importing, or exporting of any article not enumerated in such schedule.

14. Section 85 of the Act of 1816 provides that until all the works are completed, only one quarter of the rates and duties shall be paid subject to the provision made by section 86, viz., that as soon as the works are so far completed, that vessels of 200 tons may pass and repass in safety, between the piers to be made in pursuance of the Act, at high water; then and thenceforth one half of the rates and duties should be payable.

23. By the 101st section of the Act of 1816, the commissioners are required to hoist and take down a flag on the light-

doing as little damage as may be to and upon the premises, and giving or tendering such satisfaction to the owners and occupiers, or any persons interested in any lands, tenements or hereditaments respectively, for any damage that may happen or be occasioned to such lands, tenements or hereditaments as the said commissioners shall for that purpose order, adjudge, direct or appoint, according to the tenour and true meaning of this Act," &c.

house then intended and since built in the parish of Kingston-by-Sea, opposite the entrance of the harbour, and to exhibit lights on or near the shore opposite to the entrance, so as to indicate the depth of water.

24. By the 102nd section of the Act of 1816, it is enacted, that for defraying the expense of the lights and light-keeper, there shall be levied on all ships or other vessels entering the harbour, after the erection of the light or lights, the sum of one farthing upon every foot depth of water which any such ship or vessel may draw on entering the same to the extent of twelve feet, and sixpence for every additional foot which the vessel shall draw at such time above twelve feet.

25. The commissioners under the Act of 1816, in pursuance of the powers contained in section 27, formed a new entrance, and made new piers to confine the channel opposite to and near the entrance, and made the necessary dams and sluices in the eastern division of the harbour, for the purpose of sluicing it, and have since formed a canal basin, these now constituting the eastern arm, and they constructed a light-house in the parish of Kingston-by-Sea, and are rated to the relief of the poor in that parish for it, on an annual value of 8*l.* They have not erected any store-houses, store-yards, or other buildings, but they rent a store-house, yard, and workshop of W. P. Goring, Esq., in the parish of Kingston-by-Sea, for which they are rated in that parish as occupiers irrespective of the profits derived from the before-mentioned rates and duties; "and with a view of preventing persons from taking beach and boulders for ballast from the part of the shore lying west of the entrance to the harbour," which interfered with the commissioners disposing of the ballast obtained from the harbour, they entered into an agreement in the year 1847, to become yearly tenants to Lady Lloyd of her rights of soil, of and in the land covered with sea, beach, or gravel south of the harbour, at an annual rent of 5*l.*, and such agreement still exists, but the commissioners have never removed any beach under the agreement.

26. The piers at the entrance are, for

the purposes of this case, to be taken as situate within the parish of Lancing, and form the entrance to the harbour, and afford facilities for entrance to vessels that make use of it.

27. The receipts of the commissioners for rates and duties levied under the Schedule B, and for the rates or light dues authorised by the 102nd section of the said Act, are, for the purpose of this appeal and case only, to be taken at the annual sum of 9,000*l.*, subject to deductions for labour, repairs, materials, and otherwise, and it was agreed that, for the purpose of this appeal and case only, 4,000*l.* should be taken as the net annual revenue or profit, which it was agreed for the purpose of this appeal and case should be deemed to be derived under the 83rd and 102nd sections respectively, *videlicet* 3,930*l.* under the 83rd section, and 70*l.* under the 102nd section.

The question for the opinion of this Court was, whether the commissioners were rateable upon or in respect of the harbour, piers, and other works, or any or either of them, to be considered within the parish of Lancing, upon the amount of the net revenue or profits derived from the rates, duties, and dues, or any portion thereof, and if so what portion.

If, in the opinion of this Court, the commissioners were rateable in respect of the harbour, piers, and works upon the whole amount of the net revenue or profits, then it was agreed that the rate as to the gross estimated rental should be reduced to 2,250*l.*, and as to the rateable value to 2,000*l.*, being one half of the gross estimated rental and rateable value at which they were assessed as aforesaid.

If this Court should be of opinion that the commissioners were not rateable upon the whole of the net revenue or profits, but only upon some portion thereof, then it was agreed that the commissioners should be assessed and rated to the relief of the poor of the parish of Lancing, at a rateable value of one half of the amount of the net revenue or profits, at or upon which the Court should be of opinion that the commissioners were liable to be rated, and at a gross estimated rental of one-eighth more than such rateable value.

If, in the opinion of the Court, the

commissioners were not liable to be rated at all in respect of the harbour, piers, or works, then it was agreed that the rate or assessment appealed against should be amended by striking out the rate or assessment therein made upon the commissioners.

*C. Pollock* (*Archibald* and *Merrifield* with him) for the appellants.—In order to sustain the liability of the appellants to this rate, it must, in the first instance, be shewn that they are in the occupation of land, and not merely of an incorporeal hereditament, a mere easement or right of passage. The old piers and works which were erected by the authority of the Act 29 Geo. 3. c. 21, have been washed away, and no other works have been erected on the same spot since. The payment of rates and duties is provided for by sections 83 and 85 of the Act of 1816; it is submitted that those rates and duties are nothing more than pure tolls arising upon the lading, unlading, importing, and exporting goods, so that the appellants are not rateable in respect of them, *qua* tolls. It will be said that they are rateable as occupiers of the land which is enhanced in value by reason of the receipt of these tolls. But the appellants have merely a power to impose them, they have no legal property in the land. It may be that they have some property in the pier heads, but certainly not in the channel between them or in the harbour. Under the old Act of 1759, the piers and works were vested in them, but they have now ceased to exist. The only section of the Act of 1816 vesting property in the appellants is section 26; and it is submitted that the respondents have no right to rate the appellants as they have done, on three grounds.

First, because the appellants have no such property as to make them liable to be rated.

Secondly, because the occupation by the appellants is merely ancillary to the purposes of the harbour.

Thirdly, because if the appellants are rateable as occupiers of the land, they are only rateable to the extent of the value of the land, such value being increased by the fact of the piers being there, but not being increased by the actual value of the tolls.

As to the area of the harbour; it is part of a tidal river, and there is no sufficient occupation to make the appellants liable. Being a tidal river, it is a public highway for all the Queen's subjects. By section 27, the appellants are to do as little injury as possible, making compensation as provided, and there are no compulsory powers for purchasing land. In *The King v. The Mersey and Irwell Navigation Company* (2), it was held that the company were not liable to be rated for land taken for the purpose of the navigation, because they were not occupiers of that land, but had a mere easement in it. The judgment of Bayley, J., is strongly in favour of the appellants.

[LUSH, J.—Here there are no words which can have the effect of divesting the owner of his property, and the new cut which has been made can scarcely be a "work erected in and about the harbour," as mentioned in section 26.]

No; and further, there is no distinction between the cut and the rest of the harbour; the appellants have to dredge the whole. *The King v. The Aire and Calder Navigation* (3), shews that the trustees of a navigation, who have merely an incorporeal hereditament in the bed of a river, are not rateable to the poor as owners or occupiers of the river.

Next, as to the piers and works. These could only be erected within the flow and ebb of the tide, and are thus part of a public navigable river. The course of the river, the public highway, has changed, and the appellants had powers conferred upon them to divert a public highway; but it is not possible to have the exclusive occupation of a public highway. *The King v. The Aire and Calder Navigation* (3) decides that persons in whom the navigation of a river is vested, but who have no interest in the soil, are not rateable to the poor rate, in respect of a dam which upholds the water of such river and renders it navigable. Lord Tenterden, C.J., said, "This is an attempt to evade the decision of the Court in the former case of *The King v. The Aire and Calder Navigation* (3). We there held

(2) 9 B. & C. 95.

(3) 9 B. & C. 820: s. c. 8 Law J. Rep. (N.S.) M.C. 9.

that the undertakers were not rateable as occupiers of the bed of the river, having merely an easement in it. No rate then could be laid upon them for the water of the river made navigable by them; and if so, none could be imposed in respect of the dam, for to rate the dam because it keeps up the water, would be equivalent to rating the water itself. If the water cannot be rated, neither can the dam which holds it up." This passage is cited for the purpose of shewing that, as the tolls now in question are receivable for the general improvement of the whole navigation of the river, the respondents have no right to fix upon a particular work and say, "we will rate the appellants upon that part as enhanced in value by the tolls." *Lewis v. The Churchwardens and Overseers of Swansea* (4), is also an authority in favour of the appellants.

[LUSH, J.—Suppose the piers were to be let to a fisherman, he would not get the rates and duties, and would not be rateable in respect of them.]

Just so, and even if the appellants were the occupiers of anything more than an easement, they would not be rateable to a greater extent than an ordinary tenant of land improved in value by being available for the purpose of earning the tolls. See *The Queen v. The North and South Shields Ferry* (5), where the Court said, "We think that in the present case, in rating the landing place, the profit of the tolls cannot properly be brought into the calculation as the profits of the occupation of the landing place; which is, in effect, done by the rate. On the other hand, the existence of the tolls cannot be wholly excluded from consideration; but the land should be rated, not according to the view of the appellants, as land in that situation without reference to the tolls at all, but according to the principle relied on by the counsel for the respondents in the second branch of their argument; and the value should be taken, not as the value of the land merely, but as the value of land as enhanced by being available for the

(4) 5 E. & B. 508; s. c. 25 Law J. Rep. (N.S.) M.C. 33.

(5) 1 E. & B. 140; s. c. 22 Law J. Rep. (N.S.) M.C. 9.

purpose of earning the tolls. This appears to be the true principle, according to the test laid down in the Parochial Assessment Act, as it would be the rent that could be obtained, and which the company would have to pay for the land, for the purpose for which it is available under the circumstances. . . . It has been suggested that the mileage principle might be applied in calculating the rateable value in question, and that a proportion of the profits might be assessed on the two landing places, according to the proportion which their dominions bear to the length of the transit over the river. This principle may be fair in the case of profits derived from the use of land by a canal or railway running through different parishes; but we cannot think it at all applicable to a case where the toll is principally earned, not by any use of land, but by a voyage over a tidal estuary, not performed in any particular course, and where it is not pretended that the parish in which the tidal river is situated, could say that there was any use or occupation of land in their parish."

*Mellish (Gates with him) contra.*—The piers and works are clearly vested in the appellants, and in respect of them they must be rateable. They might maintain trespass for any injury done to the piers and works. It would also seem that the word "works" must include the channel which is between the piers, as well as the piers themselves. The appellants had no right to take the full amount of tolls until the new entrance to the harbour and piers were completed, and vessels of 200 tons burthen are able to pass and repass in safety between the piers. The piers are necessary for the formation and existence of the channel. The word "erected" would no doubt seem hardly applicable to the channel, but it is probable that no distinction was intended between the word "made," and the word "erected."

[*LUSH, J.*—It would be a straining of the words used to make them include the channel; there was no object in vesting the channel in the appellants.]

It is enough to say that the surface is vested in them. Probably the piers are more material than the channel. There can be no doubt that if they were not

maintained, the tolls would cease to be received, for the channel could not be available without them. The appellants being the occupiers, are rateable in respect of their occupation, the value being enhanced by the receipt of the tolls. What rent would they give to a person who owned them?

*Pollock* replied, referring to *The Queen v. The Bristol Dock Company* (6).

*BLACKBURN, J.*—I think the great difficulty in this case consists in the application of established principles to the facts before us.

The appellants have powers under their Act to dredge, improve, and work, in various ways, the harbour of Shoreham; and amongst other things (although it is not very explicitly stated in the Act what they are to do), it is clear they are empowered to make an artificial entrance from the sea through the shingle into the old and natural harbour inside, and to dredge and improve the harbour. Then comes a provision, that vessels entering the port or harbour, and going through the entrance, in order to enter the port of Shoreham, are to pay them tolls; and as pointed out by Mr. Mellish, it is provided that the rate of tolls which the Commissioners are entitled to levy is not to amount to the full sum until the works are so far completed as to enable vessels of 200 tons burthen to enter, and if at any time after the works are completed, the entrance is again choked up so that a vessel of 200 tons burthen cannot get in, the rate of toll is to be diminished. The rate of toll payable in respect of each ship depends therefore upon the extent to which the entrance is kept clear and open; and it is plain the formation of this entrance enables an increased number of ships to get into the harbour. Then comes the question, whether the amount of toll thus demandable is, in any way, to be taken into account in estimating the rateable value of the property on shore.

Now it is very clear in law, that tolls of this sort are not the subject of a rate. It is equally clear, however, that when

(6) 1 Q.B. Rep. 535; s. c. 10 Law J. Rep. (N.S.) Q.B. 346.



parties occupy land they are rateable, according to the value of that land; and that rates and tolls, though not *per se* rateable, may be considered as enhancing the value of the occupation of the land, whenever it appears that the occupation is so connected with them as that the tolls or rates are levied on account of the occupation; or, even where although not leviable on account of the occupation of the land, such occupation is nevertheless necessary to the right to demand them. This last case might be the subject of some qualification; but, as a general rule, in either of these cases the rateable value of the land is enhanced. The first question which arises then is—Do the Commissioners occupy the entrance to the harbour in such a way as to afford ground for saying that the rates or dues would not, but for such occupation, be payable? and in my opinion they do not. The power given by the Act of making this new entrance is singularly worded, and is almost contained in a parenthesis. There are also general directions given that in the construction of the works they are to do as little damage as possible, and that they are to make compensation for any damage they may do, but nothing is said as to the ownership of the soil and gravel dug out to form the entrance, and it is evident that those who framed the Act thought that it was but of trifling value. It is further to be observed, that although they are empowered to purchase land for the purposes of their undertaking they have never exercised that power; and I think, therefore, taking it on section 27 only, that though they are to make an excavation for this purpose, they cannot be considered as purchasers and owners of the land in that sense. It is no doubt true that sect. 26 vests in the Commissioners the property in the wharves, quays, and materials; but it is clear that the object of this clause was simply to provide for legal contingencies, and to enable them from time to time to prefer indictments, and to take such other steps for the preservation of the property as might be necessary; and it would be unduly straining the words to hold that the intention was to vest in them the property in this empty space at low water, and a

space of land covered with water at high water, which constitutes the entrance to the harbour. I think, therefore, that Mr. Pollock was right in saying that the true construction of the Act of Parliament is that this is not an occupation of land by the Commissioners, but simply the exercise of a right of making a passage there, which in itself would not be rateable.

With regard to the other part of the case, I think the piers on each side of this entrance are works vested in the Commissioners, and I think further, from the very nature of the things, that as long as the Commissioners occupy those piers there is necessarily and essentially an occupation of the land on which the piers stand. Then comes the principal question in the case, can we hold that the occupation of those piers is so connected with the revenue derived from the tolls and duties, as that their rateable value is enhanced by them? and in my opinion the connection between the two things is too remote to enable us to do so. Looking at it as strongly as I can for the respondents the argument would come to be this: Without the entrance as it exists, few, or none, of the tolls could be received, and the piers are necessary as serving to keep open the entrance, and so are instrumental to the right of levying the tolls; if the piers fell into decay, the entrance would be choked up, and it is argued that in such case the tolls would be lost, and that therefore the possession and occupation of them for the purpose of keeping them in repair is to be considered as enhancing the value of the harbour. This, I repeat, is too remote. There are many cases in which certain things are of very great value with reference to the possession of property elsewhere, yet not so as to enhance the rateable value of such property, an example of which is afforded by the case I put in the course of the argument. Suppose an extensive tract of rich fen land, subject at times to be overflowed, and an embankment built to keep the water out. It would be necessary, in order to protect that land, that the embankment should be kept up, and the expense of so doing would be a charge on that land; but I think it would be too much to say that

the parish, in which the bank was situate and kept up at an expense and positive loss; should be able to rate it heavier, because without that bank the land inside would be drowned; that also would be too remote. Suppose again a house built by the owner of land close to the boundary; in such case if the adjoining ground was dug away (20 years not having elapsed) the house would probably sink down. The value of the adjoining land, as a means of supporting the house, would be very considerable, and if the owner of the adjoining land chose to dig away the ground, and so make the house tumble down, it would be worth while for the owner of the house to pay a good sum to prevent his neighbour doing so, and I think it would be too remote for the parish to say, "we have a right to charge the occupation of that land as enhanced in value because it gives protection and support to the house." This shews that it is not in every case in which a thing is essential to the continuance of some other thing *in statu quo*, and is of value or essential to the making of profit, that you can say that that profit is so attached to, and so connected with the occupation as to enhance its rateable value.

I think therefore, understanding the case to be stated on the principle that the piers are worth nothing unless the profits can be taxed, we should answer the question in favour of the appellants.

MELLOR, J.—I am of the same opinion. I think the appellants' construction is the right one in regard to the nature of the acquisition of any right by the Commissioners. They were empowered for the purposes of this harbour to make excavations, and to remove gravel and other materials, and they were, amongst other works, empowered to erect these piers. It appears to me that they did not acquire the actual property in the land, though they may have acquired the right of erecting the piers, of which no doubt they are the occupiers; still it does not appear to me that the rateable value of the occupation is enhanced by the tolls. I proceed very much on the same reasons that my brother Blackburn has stated more at length.

LUSH, J.—I am of the same opinion.

The rateable value of that which is the subject of occupation is defined by the Parochial Assessment Act, as being "the rent at which the same might reasonably be expected to let from year to year, free of all usual tenants' rates and taxes, and tithe commutation rent charge, if any, and deducting therefrom the probable average cost of the repairs, insurance and other expenses, if any, necessary to maintain them in a state to command such rent." Now the only property in the occupation of the Commissioners here is the piers. The tolls, it is agreed, are not of themselves a rateable subject, but then the question is, what might those piers be expected to let for from year to year, deducting the average cost of maintaining them to command the rent. The cost of maintaining them is to be deducted from the annual value. What is the annual value of these piers? The occupier of the piers would get no part of the dues, and derive no benefit whatever from the harbour. This case is very analogous to that put by my brother Blackburn with reference to an embankment. Perhaps one more closely analogous would be this: Supposing there is a valuable mine extending for a mile on the seashore, which mine itself would not be a rateable subject, and supposing the owner of the mine was also the owner of a sea wall, and the maintenance of that sea wall was necessary for the safety of the mine from inundation, could it be said that that sea wall should be rated with reference to the profits of the mine, because, without the maintenance of that sea wall, it would not be possible to work the mine at all? The Commissioners are here in possession of tolls which it is agreed are not of themselves rateable. Then it is said they cannot earn them unless they maintain these piers, as in the proposition I have put as to the mine; yet what connection is there between the sea wall and the mine?

*Judgment for the appellants.*

Attorneys—W. Clarke, agent for Clarke & Howlett, Brighton, for appellants; A. Edmunds, agent for R. Edmunds, Worthing, for respondents.

[IN THE COURT OF EXCHEQUER.]

1870.  
May 26. } *Ex parte* TINSON.

*Rogue and Vagabond*—5 Geo. 4. c. 83. s. 4—*Frequenting Street or Highway with intent to commit Felony*—Amendment of Commitment—Conviction—*Habeas Corpus*.

By 5 Geo. 4. c. 83. s. 4, a suspected person or reputed thief, frequenting any river, canal or navigable stream, dock or basin, or any quay, wharf or warehouse near or adjoining thereto, or any street, highway or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, highway or place adjacent, with intent to commit felony, shall be deemed a rogue and vagabond, and may be convicted:—Held, that this does not apply to all streets and highways, but only to streets and highways leading or adjacent to places of the character mentioned in the Act.

*Ex parte Brown* (1) dissented from; *Ex parte Jones* (2) approved.

*Semble*—a street may, in some cases, be itself a place of public resort within the meaning of the Act.

Where a prisoner is brought up under a writ of habeas corpus, and the commitment is insufficient, and the conviction has not been brought before the Court by certiorari, the Court is not justified in looking at the conviction for the purpose of amending the commitment by it, nor in detaining the prisoner in custody until the conviction is brought up by certiorari.

George Tinson was detained in the gaol of the liberty of St. Alban's under a commitment of justices for three calendar months, which alleged the offence to be that he, being a suspected person, did frequent a certain public highway at the parish of Aldenham, in the said liberty, on the 27th day of, &c., with intent to commit felony, contrary to the statute in that case, &c.

A writ of *habeas corpus* was obtained to bring up the defendant. The return to the writ set out the commitment of the justices.

(1) 21 Law J. Rep. (N.S.) M.C. 113.

(2) 7 Exch. Rep. 586; s. c. 21 Law J. Rep. (N.S.) M.C. 116.

NEW SERIES, 39.—MAG. CAS.

*Odd*, for the prisoner.—No offence with-in the statute is disclosed either by the commitment or the return to the writ. The statute does not apply to streets or highways, unless they lead, or are adjacent to quays and other places of public resort, as described in 5 Geo. 4. c. 83. s. 4 (3). This is clear from the case of *Ex parte Elizabeth Jones* (2), in which the Court of Exchequer differed from the Court of Queen's Bench, which in *Ex parte Brown* (1) had decided that the Act applied to all highways. Patteson, J., dissented from the judgment in the last-mentioned case, and he is supported by the later decision in the Exchequer. The Act was intended to apply to persons haunting the streets adjacent to churches, theatres, and other places of public resort, for the purpose of committing felony there. According to this commitment the defendant might have been walking along the street with the intention of committing a felony ten miles off. That would not be within the statute.

*Willis*, for the committing justices.—To bring a person within the statute there need be no intention to commit a felony in or near the place. It has been found as a fact that the prisoner had the intention to commit a felony, and therefore the Court ought not to presume anything in *favorem libertatis*. The Act speaks of "any street, highway, or place adjacent," that means any place adjacent to a street. "Any street or highway" is a distinct member of the sentence, and so the Court of Queen's Bench decided. It was not intended that "street, highway, or place adjacent," must be coupled with

(3) 5 Geo. 4. c. 83. s. 4, *inter alia*, enacts that—

"Every suspected person or reputed thief, frequenting any river, canal or navigable stream, dock or basin, or any quay, wharf or warehouse near or adjoining thereto, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, highway or place adjacent, with intent to commit felony, . . . shall be deemed a rogue and vagabond within the true intent and meaning of this Act; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding three calendar months."

what has gone before, so as to apply only to streets and highways leading to the places mentioned, such as a quay, river, or place of public resort. Every public highway is itself a place of public resort, and if the justices had alleged in the commitment, as they in fact did in the conviction, that the public highway in which the prisoner was found was a place of public resort, the commitment would have been clearly good, on the authority of *Re Davis* (4), where the platform of a railway station was held to be within the Act, and the language of Pollock, C.B., who said that Regent Street might be described as a place of public resort, shews that practically the Court of Exchequer had adopted the view of the Court of Queen's Bench. A thoroughfare may be described as a place of public resort. The conviction, which describes the highway as a place of public resort, can be looked at by the Court—*Paley on Convictions*, p. 826. The Court can look at the conviction, and if it is sufficient, the prisoner will be detained—*The King v. Taylor* (5).

[KELLY, C.B.—The conviction is not before us. It should have been brought up by *certiorari*.]

Codd, in reply.—The return to the writ of *habeas corpus* sets out the commitment, and not the conviction. The Court cannot look out of the record—*Wickes v. Clutterbuck* (6), *The King v. Catterall* (7), *The King v. Chaney* (8). In *The King v. Taylor* (5), the writ of *habeas corpus* had not been issued, and the prisoner had not been brought up.

[CHANNELL, B.—Does not the case of the Canadian prisoners (9) shew that the return can be amended?]

There is nothing to amend by. The defendant ought not to be sent back to gaol on the chance that the justices may have a valid conviction, which they might have brought before the Court, but have failed to do so.

KELLY, C.B.—I am of opinion that the commitment under which the prisoner is now in custody, is defective and void, and therefore that he is entitled to be discharged. It describes the place frequented by the prisoner as a public highway. I am clearly of opinion that a public highway is not a place the frequenting of which is an offence within 5 Geo. 4. c. 83. s. 4, unless it be leading to or adjacent to a place of the description in the Act mentioned. If the commitment had alleged the highway to be a place of public resort, it might have been sufficient. There is no doubt that the case of *Ex parte Brown* (2) is in point, and directly against the prisoner, but I read the judgment of Lord Campbell with surprise, for his reasons and comments on the Act seem to me contrary to all grammar and all rules of construction. If the words of the statute had been "any street or highway, or avenue leading thereto," the comments would have been correct. We are fortified in our opinion by the later case of *Ex parte Jones* (3), with which I entirely agree. The only doubt which I have had has been created by the case of *The King v. Taylor* (5), where the conviction being sufficient was held to support the commitment, but there the application was for a writ of *habeas corpus*, and the conviction was brought before the Court by a writ of *certiorari*. Here the prisoner has been actually brought up under the writ of *habeas corpus*, and the conviction has not been brought up. In *The King v. Chaney* (8), Patteson, J., after considering *The King v. Taylor* (5), decided upon view of the commitment only, and following that case we may properly direct the prisoner to be discharged.

CHANNELL, B.—I also am of opinion that the prisoner ought to be discharged, and I agree with the construction put upon the words of the statute by the Lord Chief Baron. Looking at the commitment only, the prisoner does not appear to have been brought within the Act. I cannot concur with the decision of the Court of Queen's Bench, but it has long been settled in Westminster Hall, that in matters relating to writs of *habeas corpus* each Court is to follow its own judgment, and is not bound to follow,

(4) 2 Hurl. & N. 149; s. c. 26 Law J. Rep. (N.S.) M.C. 178.

(5) 7 Dowl. & Ry. 622.

(6) 2 Bing. 483; s. c. 3 Law J. Rep. C.P. 67.

(7) Fitg. 266.

(8) 6 Dowl. P.C. 281.

(9) 9 Ad. & E. 781

though it may respect, the judgments of other Courts. Taking the two conflicting decisions, a majority of the Judges are in favour of the prisoner. Ought we then to accede to the request that we should look at the conviction? The case which has been cited of *The King v. Taylor* (5), is clearly distinguishable. There all was *in fieri*. There were affidavits on both sides, and a *certiorari* to bring up the conviction was granted. I do not say that the conviction may not be good, but I do not decide on that ground. The application for discharge is now before us and must be finally disposed of, and the commitment, which is the only thing before us, is insufficient to warrant the detention of the prisoner.

CLEASBY, B.—I also am of opinion that the prisoner cannot lawfully be detained under this commitment, because he does not appear to have been on a highway under the circumstances stated in the statute. A highway is merely a place along which people have a right to go, and it is not a place of public resort within the meaning of the statute. In many cases a highway may be a place of public resort, and justices might be justified in so finding, as for example, where things are exposed for sale. If the magistrates had described this as a highway being a place of public resort, I do not say that the commitment might not have been good, or if they had dropped the word highway altogether, and called it simply a place of public resort. But we cannot make the alteration, nor do we say that in all cases a public highway must be a place of public resort.

*Prisoner discharged.*

Attorneys — Blagg & Edwards, St. Albans, for committing justices; R. Bailey Pugh, Watford, for prisoner.

[CROWN CASE RESERVED.]

1870. }  
June 4. } THE QUEEN v. HADFIELD.\*

*Railway—Obstructing by Altering Signals*  
—24 & 25 Vict. c. 97. s. 36.

*The 24 & 25 Vict. c. 97. s. 36. enacts, that whosoever by any unlawful act shall obstruct or cause to be obstructed any engine or carriage using any railway shall be guilty of a misdemeanour.*

*The prisoner in the night time altered the position of two arms of a semaphore signal on a railway station, so as to change the signal from "all clear" to "danger" and "caution" respectively, and also altered the colour of two distant signals on the line from white to red, thereby changing the signal from "clear" to "danger." The driver of a goods train which under ordinary circumstances would have passed through the station without slackening speed, in consequence of the state of the signals shut off steam and approached the station so cautiously that he could at any moment have come to a stand-still. The mail train following the goods train on the same line of rails, was due at the station half an hour after the goods train so passed through the station:—Held (Martin, B., dissentiente), that the prisoner had caused the engine and train to be obstructed within the meaning of the above section.*

CASE reserved by the deputy chairman of the Quarter Sessions for Cheshire:—

The prisoner was tried before me at the Quarter Sessions for the county of Cheshire, held by adjournment at Knutsford in the said county on the 22nd day of February, 1870, upon the following indictment, which was framed upon the 36th section of the statute 24 & 25 Vict. c. 97.

Cheshire } No. 87. Knutsford Sessions,  
to wit. } 22nd of February, 1870.

The jurors for our sovereign lady the Queen upon their oath present, that Joseph William Hadfield, on the fourteenth day of January, in the year of our Lord one thousand eight hundred and seventy, by a certain unlawful act, to wit, by unlawfully interfering with and changing

\* Coram Kelly, C.B., Martin, B., Blackburn, J., Mortague Smith, J., and Mellor, J.

certain signals in use, upon a certain railway called the Manchester, Sheffield and Lincolnshire Railway, in the township of Dukinfield in the said county of Chester, unlawfully and wilfully did obstruct and cause to be obstructed a certain engine and carriages then using such railway, against the form of the statute in such case made and provided, and against the peace of our said lady the Queen her crown and dignity.

And the jurors aforesaid upon their oath aforesaid, do further present that the said Joseph William Hadfield, on the day and year aforesaid, unlawfully and wilfully did obstruct and cause to be obstructed a certain engine and carriages, then using a certain railway called the Manchester, Sheffield and Lincolnshire railway, in the said township of Dukinfield and county of Chester, against the form of the statute in such case made and provided, and against the peace of our said lady the Queen her crown and dignity.

On behalf of the prosecution, it was proved that at about eleven o'clock on the night of the 14th of January last, the clerk in charge of the Dukinfield station of the Manchester, Sheffield and Lincolnshire railway locked up all the doors of that station. He had just previously dispatched the last train timed to stop at that station, and had seen that all persons, passengers and others, had left the station. He then arranged the signals for the night. There was a semaphore signal on the platform, having several arms with a separate lever to work each arm, and there were two signals at about 200 yards' distance from and on either side of the station, one on the "up" line and the other on the "down" line, and both worked by levers from the platform at the station. The clerk put out the lights of the semaphore signal, and placed the arms down to indicate the lines "all clear," and the two distant signals he arranged so as to shew white lights also, indicating that the lines were clear. He went to bed on the premises, and in a few minutes heard a knocking at the station door, and immediately afterwards he heard a person, who subsequently turned out to be the prisoner, climbing over a door in the wall of the

station. The clerk heard the prisoner walk along the platform towards the semaphore signal and rattle the levers. He then looked out of the window and saw that one arm of the semaphore was at right angles with the post, and another at an acute angle, the former signifying "danger," the latter "caution." He went out and found the prisoner outside the station, near some steps, leading to the door over which he had climbed to get into the station. The prisoner was not sober, and having been told by the clerk that he had been seen meddling with the signals, he ran away, but was followed by the clerk, who overtook him and gave him into custody. On his way back to the station, the clerk saw a goods train, which under ordinary circumstances would have passed through Dukinfield station without slackening speed, moving slowly though the station on the up line, and on arriving at the station he saw that both the distant signals shewed red lights, indicating "danger," and that all the levers of the semaphore had been altered.

It appeared from the evidence of the driver of the goods train, that he had observed the distant signal on the "up" line, shewing the red light, and that in consequence he shut off steam and approached the Dukinfield station cautiously, and that at the station he brought the train "very near to a stand and could have come to a stand at any moment," but seeing no one on the platform he passed on.

It was also proved that the mail train going in the same direction and on the same rails as the goods train, was due at Dukinfield station in about half an hour after the goods train so passed through the station. At the close of the evidence for the Crown it was objected by the counsel for the prisoner that the case was not within the above-mentioned section, as the facts proved did not amount to an "obstruction" within the meaning of the section. I however left the case to the jury, reserving the question hereby raised for the opinion of this Court, and the jury found the prisoner guilty. Judgment was respited, and the prisoner was discharged upon entering into his own re-

cognizance to come up to receive judgment when called upon.

The opinion of the Court for the consideration of Crown cases reserved is requested as to whether, upon the above facts, the prisoner was properly convicted.

No counsel appeared for the prisoner.

*Horatio Lloyd*, in support of the conviction.—It is submitted that these facts constitute an obstruction within the meaning of the statute.

**KELLY, C.B.**—I think there was an obstruction within the meaning of the Act. The driver of the goods train, seeing the signals, so nearly came to a stand that he could have stopped at any moment. I think this was as much an obstruction as if the prisoner had put a log of wood on the rails before the goods train.

**BLACKBURN, J.**—The previous section (section 35) enumerates various acts, which if done maliciously and with any of the intents there mentioned, amount to a felony. One of such acts is the making or shewing, hiding or removing any signal or light upon or near to any railway with intent to obstruct any engine, carriages or trucks using such railway. Then the section now in question (section 36) provides that whoever, by any unlawful act, shall obstruct or cause to be obstructed any such engine or carriage, shall be guilty of a misdemeanour. The prisoner in the present case was a drunken man, and therefore a jury would never have found that he acted as he did maliciously, and with any of the intents mentioned in the statute, but in fact a train was delayed, and the working and machinery of the line put out of order. Now the question is whether that amounts to causing the engine and carriages to be obstructed. Any act which causes the train to be obstructed, though not of a physical character, is I think within the meaning of the section, therefore the conviction ought to be affirmed.

**MELLOR, J.**—I am of the same opinion. I think that section 36. contemplates and includes the acts specified in section 35.

**MONTAGUE SMITH, J.**—I am of the same opinion.

**MARTIN, B.**—I cannot agree with the rest of the Court. I think it is straining

the enactment beyond what the words bear, to include such an act as the prisoner committed. An act which only operates on the mind of a careful and watchful driver of a train, so as to induce him to drive slowly, is not, in my opinion, an obstruction within the meaning of this section. We are construing a criminal statute, and I do not think we ought to strain the words beyond their plain meaning, in order to meet a mischief which the framer of the statute did not contemplate. Therefore I think this conviction ought to be quashed.

*Conviction affirmed.*

Attorneys—Canliffe & Beaumont, agents for J. R. & R. Lingard & Powell, Manchester, for the prosecution.

[CROWN CASES RESERVED.]

1870. }  
May 7. } THE QUEEN v. S. VON SEBERG.\*  
June 4. }

*Evidence—British Ship Register—Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104. s. 106)—Indictment for Wounding with Intent.*

*On the trial of an indictable offence, committed on board a British ship on the high seas, it is not necessary to prove the register of such ship under the Merchant Shipping Act, 1854, part 11, or that she belongs to a person qualified to be owner of a British ship according to the terms of that Act.*

*Upon the trial of an indictment against a sailor for wounding the mate on board a ship on the high seas, the master of the ship, the boatswain, and one of the crew, stated that the ship was a British ship, and that she was sailing under the British flag:—Held, that the ship was sufficiently proved to be a British ship.*

Case reserved by Hammen, J.

At the Spring assizes for Cornwall upon an indictment which charged the

\* Coram Bovill, C.J., Willes, J., Byles, J., Hammen, J., and Cleasby, B.

prisoner with maliciously wounding one W. Bedlington, with intent to do him grievous bodily harm;

It was proved at the trial that the prisoner was a sailor on board the bark, *Statesman*, and that while on the high seas, on a voyage from Alexandria to Falmouth, he inflicted on W. Bedlington, the mate of the vessel, a dangerous wound with a knife.

The master, the boatswain, and one of the crew of the *Statesman*, all stated that the vessel was a British ship, of Shields, and that she was sailing under the British flag, but no proof of the register of the vessel or of the ownership was given.

It was objected on behalf of the prisoner that this evidence was not sufficient to establish that the ship was a British ship, and that without proof of the ship having been registered as a British ship, the prisoner could not be convicted.

No counsel appeared.

*Cur. adv. vult.*

Judgment was delivered on June 4, by BOVILL, C.J.—We think the conviction in this case was correct. The evidence was, in our opinion, sufficient to prove that the vessel was a British ship without proof of her having been registered, and even if it had appeared that she had not been registered we think the prisoner ought still to have been convicted; first, because there is nothing in the Merchant Shipping Act to take away the criminal jurisdiction of the Court, and next, by reason of the provision at the end of sect. 106 of the Merchant Shipping Act, 17 & 18 Vict. c. 104 (1), which provides that, as regards

(1) By 17 & 18 Vict. c. 104. s. 19, "No ship hereby required to be registered shall, unless registered, be recognised as a British ship."

By sect. 106, "Whenever it is declared by this Act that a ship belonging to any person or body, qualified according to this Act to be owners of British ships, shall not be recognised as a British ship, such ship shall not be entitled to any benefits, privileges, advantages or protection, usually enjoyed by British ships, and shall not be entitled to use the British flag or assume the British national character; but so far as regards the payment of dues, the liability to pains and penalties, and the punishment of offences committed on

the punishment of offences committed on board such a ship, she shall be dealt with in the same manner as if she were a recognised British ship (2). The conviction will therefore be affirmed.

*Conviction affirmed.*

board such ship, or by any persons belonging to her, such ship shall be dealt with in the same manner, in all respects, as if she were a recognised British ship."

Sect. 107. "Every register of, or declaration made in pursuance of the second part of this Act, in respect of any British ship, may be proved in any Court of Justice, or before any person having, by law or by consent of parties, authority to receive evidence, either by the production of the original or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the registrar, or other person having the charge of the original; which certified copies he is hereby required to furnish to any person applying at a reasonable time for the same, upon payment of 1s. for each such certified copy; and every such register or copy of a register, and also every certificate of registry of any British ship, purporting to be signed by the registrar or other proper officer shall be received in evidence in any Court of Justice, or before any person having, by law or by consent of parties, authority to receive evidence as *prima facie* proof of all the matters contained or recited in such register, when the register or such copy is produced, and of all the matters contained in or endorsed on such certificate of registry, and purporting to be authenticated by the signature of a registrar, when such certificate is produced.

(2) Offences peculiar to the "Discipline" clauses of the Merchant Shipping Act, 1854, ss. 239-259, stand on a different footing. In such cases it is essential to a conviction that the fact that the ship is a British ship be proved by the register or an examined or certified copy under sect. 107.—See *Leary v. Lloyd*, 29 Law J. Rep. (N.S.) M. C. 104.



## [CROWN CASE RESERVED.]

1870. }  
 June 4, 11. } THE QUEEN v. DAVIS.\*

*Receiving Stolen Goods—Evidence—Previous Conviction of Receiver—Onus of Proof—Notice—Habitual Criminals Act, 1869 (32 & 33 Vict. c. 99), s. 11.*

*By the Habitual Criminals Act, 1869 (32 & 33 Vict. c. 99), s. 11, where any person who has been previously convicted of any offence specified in the first schedule hereto and involving fraud or dishonesty, is found in the possession of stolen goods, evidence of such previous conviction shall be admissible as evidence of his knowledge that such goods have been stolen; and in any proceedings that may be taken against him as receiver of stolen goods, or, &c., proof may be given of his previous conviction before evidence is given of his having been found in possession of such stolen goods; provided that not less than seven days' notice shall be given to such person that proof is intended to be given of his previous conviction, and that he will be deemed to have known such goods to have been stolen until he has proved the contrary. On the trial of a receiver of stolen goods, a notice was proved to have been duly given him in the above form, and a previous conviction for larceny was proved against him, and such evidence was relied on as proof of guilty knowledge. The prisoner offered no evidence to rebut such evidence of guilty knowledge:—Held, that in the absence of any enactment in the statute that he should be deemed to have known such goods to have been stolen until he proved the contrary, the notice could not have the effect it purported to have, and that such receiver was not called upon to prove that he had not such guilty knowledge.*

CASE reserved by a learned Commissioner of Assize on the South Wales Circuit:—

John Davis was tried and convicted before me at the last Assizes for the county of Glamorgan, upon an indictment charging him with receiving stolen goods knowing them to be stolen. At the trial a notice under the 11th section of

\* Coram Kelly, C.B., Martin, B., Blackburn, J., Montague Smith, J., and Mellor, J.

the 32 & 33 Vict. c. 99, was proved to have been duly served upon the prisoner. It was further proved that in the year 1867, the prisoner had been convicted of larceny. It was also proved that he had received the goods which were the subject of the indictment, and that those goods were stolen. I told the jury that the legislature must be taken to have intended that the notice should have the operation which, upon the face of it, it purported to have, and that the prisoner ought to be deemed to have known such goods to have been stolen until he proved the contrary. The prisoner was not defended by counsel, but entertaining doubts whether the above direction was right, I reserved a case for the opinion of this Court and admitted the prisoner to bail. The question for the opinion of the Court is, whether my direction to the jury was right.

No counsel appeared.

*Our. adv. vult.*

Judgment was (on June 11) delivered by

KELLY, C.B.—This conviction must be quashed. There is no enactment in the statute to give the notice the effect it purported to have, and to throw the onus of proof of absence of guilty knowledge on the prisoner.

*Conviction quashed.*

## [IN THE COURT OF QUEEN'S BENCH.]

1870. }  
 June 11. } TUBE appellant, GOOD respondent.

*Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), s. 51—Fees due to District Surveyor.*

*The fees due under the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), s. 51, to a district surveyor, one month after the roof of any building surveyed by him in pursuance of the Act shall have been covered in, are payable by whomsoever at that time answers the description of "builder, occupier, or owner," and cannot be charged upon a person subsequently becoming the owner of the premises.*

CASE stated by one of the Metropolitan Police Magistrates for the opinion of the Court of Queen's Bench :—

In May, 1866, notice was given by one Savage, a builder, to Joseph Good, the district surveyor of Poplar, and hereinafter called the respondent, of his intention to erect three houses in Lefevre Road, North Bow, under 18 & 19 Vict. c. 122 (Metropolitan Building Act), s. 38.

The houses were duly inspected by the respondent as district surveyor. The roofs of the houses were covered in on the 9th of July, 1866, and on the 6th of August, 1866, the respondent became entitled to receive five guineas as the amount of fees due to him from the builder, owner, or occupier of the buildings so erected under section 51 of the above-mentioned Act.

William Tubb, the appellant, was not the builder, owner, or occupier of the buildings in 1866, but became the owner thereof prior to October, 1869. A proper bill, specifying the amount of the fees due to the respondent, was delivered to the appellant on the 1st of October, 1869, which the appellant refused to pay; whereupon a summons was issued against him, and came on for hearing on the 10th of February, 1870, at the Worship Street Police Court.

The appellant contended that he was not "such owner, &c.," as section 51 of the above-mentioned Act contemplated, and as the summons alleged, he not having been owner in 1866 or 1867.

The magistrate made an order for the payment by the appellant to the respondent of the sum of 5*l.* 5*s.*, subject to the opinion of this Court, as to whether, on the above stated facts, such decision was right in point of law.

*Philbrick*, for the appellant.—By s. 51 of the 18 & 19 Vict. c. 122 (Metropolitan Building Act, 1855), "one month after the roof of any building, surveyed by any district surveyor, has been covered in, the district surveyor shall be entitled to receive the amount of fees due to him from the builder employed in erecting such building, &c. (the amount of the fees being regulated by s. 49, referring to the first part of the second schedule), or from the owner or occupier of the building so erected; and if any such builder,

owner, or occupier refuses to pay the same, such fees may be recovered in a summary manner before a justice of the peace upon its being shewn to the satisfaction of such justice that a proper bill, specifying the amount of such fees, was delivered to such builder, owner, or occupier," &c. The appellant is not liable to the payment of these fees, having succeeded to the ownership after the same became due; and the liability created by the statute is not one which runs with the land, but attaches to the person to whom the service was rendered.

*Bush Cooper*, for the respondent.—The appellant is chargeable in this instance with the fee as "owner," which term applies to the person entitled to the rents and profits. It was not the object of the Act to make the person liable who merely covers in a building; such process does not of itself render it fit for occupation, and so long as the house is not fit for occupation, no fee is payable. It does not appear that any one was in receipt of the rents or profits arising from the premises in question, previous to the vesting of the ownership in the appellant; and the decision of the magistrate was therefore right.

BLACKBURN, J. (1)—I think it clear that the Act means that these fees are payable, when they become due, by the person who at that time answers the description of "builder, owner, or occupier." In this case the appellant's interest in the premises did not commence until long after the performance of the services in respect of which the fee is claimed, and I think therefore that he is entitled to our judgment.

MELLOR, J.—I am of the same opinion. The liability created by this statute is clearly not one which runs with the land.

LUSH, J., concurred.

*Judgment for the appellant.*

Attorneys—Appleby & Crowther, for appellant;  
S. T. Roberts, for respondent.

(1) Cockburn, C.J., had left the Court.

[IN THE COURT OF QUEEN'S BENCH.]

1870. { THE QUEEN v. THE INHABITANTS  
June 4. { OF THE PARISH OF ST. MARY,  
          { ISLINGTON.

*Order of Removal—Irremovability—  
Wife Deserted by Husband—Unemancipated  
Child—24 & 25 Vict. c. 55. s. 3—29 & 30  
Vict. c. 113. s. 17.*

*On the 12th of December, 1867, an order was made for the removal of Lucy L. and her daughter Lucy from the respondent parish to the appellant union. For more than one year next before the application for the order, Lucy L. and her daughter had resided together in the respondent parish; the daughter being eighteen years of age, and unemancipated at the date of the order. About thirteen years before that date Lucy L. and her husband were living, together with their children, in the parish of M. They quarrelled in consequence of his intimacy with another woman, and she, having attempted to stab him, was bound over to keep the peace towards him. He took other lodgings for himself, where he lived with the other woman. In consequence of his wife becoming chargeable, the parish officers of M. threatened him with legal proceedings if he did not maintain her. He agreed to allow her a weekly sum of money, and this he paid up to the date of the application for the order of removal. She remained in the lodgings which the family had occupied before the separation till she removed into the respondent parish, and there resided, as above mentioned, with her daughter. Their place of settlement was in the appellant union:—Held, that Lucy L. was irremovable, inasmuch as she had been deserted by her husband within the meaning of the 3rd section of the 24 & 25 Vict. c. 55, amended by the 29 & 30 Vict. c. 113. s. 17; but that the daughter, being unemancipated and above the age of sixteen years, was removable.*

Upon appeal against an order of justices for the removal of Lucy Lawrence and her daughter Lucy from the parish of St. Mary, Islington, to the Poor Law Union of Kingston, in the counties of Surrey and Middlesex, the Sessions quashed the order, subject to the following CASE for the opinion of this Court:—

NEW SERIES, 39.—MAG. CAS.

1. The only questions in this Case are, whether the paupers, or either of them, were irremovable from the parish of St. Mary, Islington, the settlement being admitted to be in the appellant union.

2. Lucy Lawrence, the mother, was the wife of John Lawrence, and Lucy was their daughter, aged eighteen years, and was unemancipated, but John Lawrence and Lucy Lawrence, the mother, had not lived together for about thirteen years past.

3. For more than one year next before the application for the warrant or order of removal, Lucy Lawrence, the mother, had resided in the respondent parish of St. Mary, Islington, and if she had been a widow during that period would have become irremovable from that parish. The daughter Lucy for the same period and longer acted as a daily servant in various families in the respondent parish, but during that time resided with her mother. John Lawrence had during the same period resided in Westminster, and had never resided in the respondent parish of St. Mary, Islington, so as to become irremovable therefrom.

4. About thirteen years ago John Lawrence and Lucy Lawrence, the mother, were living, together with their children, in lodgings in the parish of St. Margaret, Westminster, when various disagreements having arisen between them, in consequence of his having formed an intimacy with another woman, and Lucy Lawrence having attempted to stab her husband, he obtained a warrant against her from the Westminster Police Court, upon which she was bound over to keep the peace towards him. The husband then took other lodgings for himself and the children, and left his wife, Lucy Lawrence, in the lodgings the whole family had previously occupied, where she remained until she removed into the respondent parish. The husband and wife had not lived together since that time, but the husband has continued to live, and is still living, with the woman about whom the disagreement between him and his wife had taken place, and by whom he has since had children.

5. John Lawrence did not at first make his wife any allowance for her maintain-

T

ance, but she having shortly afterwards become chargeable to the parish officers of St. Margaret, Westminster, they threatened John Lawrence with legal proceedings if he did not maintain her; he then, in order to prevent such proceedings, agreed to allow her 2s. 6d. a week towards her maintenance, which he paid up to the time of the making the order of removal.

6. Neither Lucy Lawrence nor the daughter Lucy has any other settlement than the settlement of John Lawrence, which is, as before stated, in the appellants' union.

7. It was contended on behalf of the appellants that each of the paupers was irremovable from the respondent parish, on the ground, firstly, as to Lucy Lawrence, the mother, that she had been deserted by her husband thirteen years ago, and after his desertion had resided for one year in such a manner as would, if she had been a widow, have rendered her exempt from removal, and that she had therefore become irremovable by virtue of the 24 & 25 Vict. c. 55. s. 3 (as amended by the 29 & 30 Vict. c. 113. s. 17); and, secondly, as to the daughter Lucy, that for the following reasons, or some or one of them, she had become irremovable:—

First—That she resided in the respondent parish, as before stated, for more than twelve calendar months.

Second—That she was residing with her mother who was alleged to be irremovable, and therefore became irremovable by virtue of 11 & 12 Vict. c. 111.

Third—That, she being above the age of 16 years, the relief given to her was not relief given to her father, and that her father, not being in receipt of relief, except so far as relief to his wife was relief to him, would not, if residing in the respondent parish, have been removable therefrom.

8. It was contended, on behalf of the respondents, firstly, that neither of the said paupers was irremovable, inasmuch as Lucy Lawrence, the mother, had not become irremovable, as contended for by the appellants, she not having been "deserted" within the meaning of the 24 & 25 Vict. c. 55; and secondly, that the daughter Lucy was removable on the ground that even if her mother had become irre-

movable, the daughter being under the age of 21 years and unemancipated, and having no other settlement than that of her father, was removable by virtue of 11 & 12 Vict. c. 111, because her father, John Lawrence, was removable.

9. The Court of Quarter Sessions decided both of the appellants' points in their favour, and quashed the warrant or order of removal as to both paupers, but granted a Case.

10. The questions for the opinion of this Court were: First—Whether Lucy Lawrence, the mother, was "deserted" by her husband within the meaning of the 24 & 25 Vict. c. 55. s. 3.

Second—Whether the daughter, Lucy, was irremovable from the respondent parish.

*Field*, for the appellants in support of the order of Sessions.—First, as to the mother, she comes within the 3rd section of 24 & 25 Vict. c. 55, which provides that "where a married woman shall have been or shall be deserted by her husband, and shall, after his desertion, reside three years in such a manner as would, if she were a widow, render her exempt from removal, she shall not be liable to be removed from the parish wherein she shall be resident, unless her husband returns to cohabit with her." By 29 & 30 Vict. c. 113. s. 17, the period of one year is substituted for the period of three years. It is clear that this is a case of desertion, every element, necessary to establish it, being present. The husband has deserted her, and only contributes to her maintenance because the parish officers insist upon his doing so. The desertion is the act of his will; while he refrains from cohabiting with her, the desertion is complete. This is shown by the latter words of the 3rd section of 24 & 25 Vict. c. 55.

As to the daughter, there is a difficulty in supporting the order of Sessions.

[LUSH, J.—The 9 & 10 Vict. c. 66. s. 3, provides that no child under the age of sixteen years residing with its father or mother shall be removed where the father or mother cannot be removed. Does it not follow that the 11 & 12 Vict. c. 111. s. 1 also applies to children under that age?]

A child of 18 years of age is within

the enacting part of the 1st section of 9 & 10 Vict. c. 66, and as the mother is irremovable, it seems the daughter is so too.

*Poland*, for the respondents.—As to the mother it is submitted that what has taken place does not amount to desertion. The husband does not go out of the way, so that he could not be found, nor did he keep up his household. Even after the wife goes to the respondent parish, she keeps up communications with him and receives the same sum of money which he had agreed to pay. In order to be “deserted” the wife must be as badly off as if she were a widow. [He was not heard upon the question whether the daughter was removable.]

COCKBURN, C.J.—I am sorry that we should be obliged to decide that the daughter is removable when her mother is not, but the 9 & 10 Vict. c. 66. s. 3 expressly mentions the age of 16 years and makes a child under that age irremovable. Here the daughter is 18 years of age, and we must hold that she was removable. As respects the case of the mother, I am of opinion that this is a case of desertion. [His Lordship went through the facts as stated in the case, and then continued:] The separation, therefore, originates with the misconduct of the husband, and continued up to the time of the application for the order of removal. The only question is whether the payment of 2s. 6d. a week makes any real difference, and deprives his act of the character of desertion. I think it does not.

LUSH, J.—I am of the same opinion. The payment of the 2s. 6d. a week was agreed to by the husband under the fear of a prosecution against him as a rogue and vagabond, and does not in any way alter the character of his conduct, so as to prevent it from being a desertion within the meaning 24 & 25 Vict. c. 55. s. 3.

*Order of removal quashed as to the mother, but confirmed as to the daughter. Order of Sessions confirmed as to the mother, but quashed as to the daughter.*

Attorneys—R. F. Bartrop, Kingston-on-Thames, for appellants; W. Sparling, for respondents.

[IN THE COURT OF QUEEN'S BENCH.]

SECOND DIVISION.

1870. }  
June 8. } JONES v. WHITTAKER.\*

*Billiard License—Prohibition of Exciseable Liquors—Beer*—8 & 9 Vict. c. 109—9 Geo. 4. c. 61. s. 37—11 Geo. 4. and 1 Will. 4. c. 51. s. 2—32 and 33 Vict. c. 27. s. 16.

*Beer is not an exciseable liquor within the meaning of the prohibition in a billiard license, under 8 & 9 Vict. c. 109, against allowing the consumption of exciseable liquors in a house licensed for public billiard playing.*

*By the terms of the license granted for keeping a house for public billiard playing given in the schedule to the 8 & 9 Vict. c. 109, it is provided that the licensees “do not knowingly allow the consumption of exciseable liquors therein.” By 11 Geo. 4. and 1 Will. 4. c. 57, the excise duty on beer which had previously been charged was repealed; and it was expressly provided that the hereditary duties thereon should not be collected during the reign of his Majesty:—Held, that beer is not an exciseable liquor within the meaning of the prohibition in a billiard license.*

*Lancashire v. the Justices of Staffordshire (1) followed.*

CASE stated by the Stipendiary Magistrate for Manchester, under the 20 & 21 Vict. c. 43.

The appellant, on the 10th day of December last, appeared before the above-mentioned magistrate to answer the charge of having “on the 1st day of December, 1869, being then duly licensed to keep a house for public billiard playing, unlawfully and knowingly allowed the consumption of a certain exciseable liquor in his said house, to wit, beer, by certain persons then resorting thereto, against the tenour of the said license, and contrary to the statute in such cases made and provided.”

It was proved that the appellant occupied a house in the city of Manchester, for which he was duly licensed under the

\* Coram Mellor, J., and Pigott, B., sitting as Assistant Judge under the Judges Jurisdiction Act, 1870 (33 Vict. c. 6).

(1) 26 L. & J. Rep. (n.s.) M.C. 171; s.c. 7 E. & B. 839, sub nom. *The Queen v. Lancashire*.

3 & 4 Vict. c. 61, and 32 & 33 Vict. c. 27, to sell beer, wine and cider, to be consumed on the premises. The appellant also held a license under the 8 & 9 Vict. c. 109, to keep the said house for public billiard playing, and such license was in the form given in the schedule to that Act. The appellant kept a billiard table for public use, which was so used by the public, and during the time of play the appellant allowed beer to be consumed on the premises.

It was objected, *inter alia*, at the hearing of the complaint on behalf of the appellant, that beer was not an exciseable liquor. The objection was overruled and the appellant was convicted, and the question was whether such conviction were right or wrong in law.

*Ambrose* for the appellant.—The question is whether beer is an exciseable liquor within the meaning of the proviso to the license granted by justices, under the 8 & 9 Vict. c. 109. s. 10, to keep a house for public billiard playing. The proviso is that the licensee do not knowingly allow the consumption of exciseable liquors therein by the persons resorting thereto. The form of the license is given in the 3rd schedule to the Act. By section 11, every house kept for public billiard playing is required to be licensed, except a house for which the occupier holds a licensed victualler's license under 9 Geo. 4. c. 61. The appellant holds a license for his house for the sale of beer, &c., under 11 Geo. 4. and 1 Will. 4. c. 5, and has been convicted of an offence against the tenour of his billiard license, under section 12, for selling beer to persons playing at a public billiard table in his house, and it is submitted that beer is not an exciseable liquor, and that, therefore, the conviction is wrong. Beer is not now subject to any duty of excise. In *Lancashire v. The Justices of Staffordshire* (1), sweet wines, which by the interpretation clause (section 37 of the 9 Geo. 4. c. 61), were then exciseable liquors, as being then chargeable with duty either by customs or excise, were held to be no longer exciseable liquors after the abolition of the duty upon them by 4 & 5 Will. 4. c. 77, although the duty on the license to sell them was still retained. It is true that Mr. Justice Erle differed from the rest of the Court but he was overruled, and the case

is on all-fours with the present. The duty on the article is one thing, and the duty on the license to sell it is another.

*Hopwood* for the respondent.—Beer is an exciseable liquor within the meaning of the prohibition in the billiard license. According to a note in Mr. Oke's *Magisterial Synopsis*, p. 900, ed. 8, it has been the practice not to license beerhouse keepers for that reason. He mentions the prohibition and adds, "which liquors, according to the opinion of the excise authorities, include beer, ale, porter, cider and perry." An exciseable liquor is a liquor upon which Her Majesty could exercise the prerogative right of taking excise duties, and in fact extends to any liquor under the management of the excise as authorities, as, for instance, by controlling its sale by requiring a license to be taken out by the seller. An excise license is necessary for the seller of beer. The legislature, by their language in different statutes, shew that they consider beer as an exciseable liquor. In the 9 Geo. 4. c. 61. s. 37, which is the Act still in force relative to the licensing of alehouses, and is referred to in the 8 & 9 Vict. c. 109. s. 12, and incorporated to a certain extent with the latter Act, beer is expressly mentioned in the interpretation clause as an exciseable liquor, and in the last Act with respect to licensing beerhouses, the 32 & 33 Vict. c. 27. s. 16, beer is classed with exciseable liquors. That section imposes a penalty "where any person licensed under 9 Geo. 4. c. 61, is convicted of keeping his house open for the sale of, or of selling beer, cider, wine, spirits or *any other exciseable liquor*," at a time when it ought by law to be closed, &c. If an exciseable liquor means a liquor upon which an excise duty can be imposed, then beer is such a liquor. The prerogative right to impose duty on beer still exists, it was only suspended by the 11 Geo. 4. and 1 Will. 4. c. 51 during the reign of his late Majesty. There is nothing to prevent her present Majesty exercising her prerogative right by collecting that duty now. If the contention of the appellant prevails, a person who gets a billiard license can evade the statutes which require him to get an excise license, and the certificate of the magistrates.

*Ambrose* in reply.—At the time of the 9 Geo. 4. c. 61, beer was subject to an excise duty, and therefore was an exciseable liquor.

MELLOR, J.—I am of opinion that, upon the authority of the case of *Lancashire v. The Justices of Staffordshire* (1), I must hold that beer is not an exciseable liquor. With regard to the point made by the respondent's counsel, that beer is treated as an exciseable liquor in the 32 & 33 Vict. c. 27. s. 16, by reason of the expression "beer, cider, wine, spirits or any other exciseable liquor," I think that the collocation refers "any other exciseable liquor" to the last antecedent spirits, and throws no light upon the present question. If the expression "other exciseable liquor" had followed immediately upon beer or wine, there might have been more force in that point. Upon the facts I can, however, see no distinction between this case and *Lancashire v. The Justices of Staffordshire* (1). In that case sweet wines were subject to excise duty at the time of the passing of the 9 Geo. 4. c. 61, and were exciseable liquors at that time. That duty was subsequently repealed, but an excise license was still required by sellers, yet the Court held that sweet wines were no longer an exciseable liquor after the repeal of the duty. So here, beer was liable to an excise duty at the time of the passing of the 9 Geo. 4. c. 61, and was, therefore, included within the term exciseable liquor in that statute; but it is now no longer subject to that duty, and is therefore not an exciseable liquor within that statute, and was not so at the time of the passing of the 8 & 9 Vict. c. 109, under which the billiard license in the present case was granted. I confess I am unable to follow the reasoning of Erle, J., in expressing his dissent in the case of *Lancashire v. The Justices of Staffordshire* (1). But it has been argued that the duty on beer is not repealed, and that the effect of the statutes passed at the beginning of a fresh reign, for the purpose of substituting certain duties in the place of the prerogative revenues, is not to abolish the prerogative right to levy the duty, but to keep up the right for a fresh bargain at the beginning of the next reign, but it would be strange if we

were not to hold that a sufficient repeal and abolition for the present purpose. I therefore think beer is not an exciseable liquor within the meaning of this license, and the conviction must be quashed.

PIGOTT, B.—I quite agree. *Lancashire v. The Justices of Staffordshire* (1) is an express authority upon the point raised.

*Judgment for the appellant.*

Attorneys—E. K. Randell, agent for Cobbett & Co., Manchester, for appellant; Johnson & Weatheralls, agents for Higson & Son, Manchester, for respondent.

[IN THE COURT OF COMMON PLEAS.]

1870. } COPLBY (appellant) v. BURTON  
June 28. } (respondent).

*Public House—Opening on Sunday during Prohibited Hours—11 & 12 Vict. c. 49—Costs.*

*A was charged before justices, under 11 & 12 Vict. c. 49, with having opened his house for the sale of wine and beer on Sunday, before half-past twelve. He kept a refreshment room communicating with a railway station; he had a notice thereon as to the penalties incurred in case of persons not travellers having refreshment during prohibited hours; he had ordered his servants to ask persons if they were going by train; eight persons were in the room within the prohibited time; he had questioned six of them, but his servant neglected to question two who came in during A's absence; of the eight persons, four were strangers who went off by a train which started shortly after their entering the room; the others resided about a quarter or half-mile off, and three of them took tickets and went by the train, whilst the fourth had accompanied his son, who went by it. The justices convicted A:—Held, that the conviction was wrong.*

*The Court in future will, on quashing a conviction of this kind, do so with costs.*

This was a CASE stated by justices under 20 & 21 Vict. c. 43.

1. At a petty sessions holden by adjournment at Todmorden, in the West Riding of the county of York, on the 9th day of September, 1869, an information preferred by William Burton, sergeant of police (hereinafter called the respondent)

against John Copley, a licensed victualler (hereinafter called the appellant), under sec. 1 of the Act 11 & 12 Vict. cap. 49, charging for that he, the said John Copley, on the 22nd day of August then last, at Todmorden and Walsden, in the county of Lancaster, then being a licensed victualler, and the said day being Sunday, unlawfully did open his house for the sale of wine and beer, before half-past twelve o'clock in the afternoon of the said last-mentioned day, to wit, at ten minutes past eleven o'clock in the forenoon, otherwise than as refreshment for travellers, was heard and determined by us, the said justices respectively being then present, and upon such hearing the appellant was duly convicted before us of the said offence, and we adjudged him to pay 1s. penalty and 14s. costs.

2. And whereas the appellant being dissatisfied with our determination upon the hearing of the said information, as being erroneous in point of law, hath, pursuant to sec. 2 of the said statute, 20 and 21 Vict. c. 43, duly applied to us in writing to state and sign a case, setting forth the facts, and the grounds of such our determination as aforesaid, for the opinion of this Court, and hath duly entered into a recognizance, as required in that behalf by the said last mentioned statute.

3. Now, therefore, we the said justices, in compliance with the said application, do hereby state and sign the following case :

4. Upon the hearing of the said information, it was proved and found by us as facts that the appellant's house, which is called the Queen's Hotel, is situate in Todmorden, near to the railway station there, and has a communication with such station by means of a covered gangway, in the sides of which are windows, and which leads into a room called the refreshment room. The respondent, accompanied by a police constable, visited the appellant's premises about ten minutes past eleven, a.m., they having seen men walk along the gangway from the station into the hotel, some of whom they knew to be residents in the same town. The respondent and constable visited the refreshment room of the hotel by the gangway from the station, and found therein

eight men, six of the men having each a glass of beer part drunk, and the other two men having a glass of sherry each; they were all standing, and some were smoking; four of these men the officers knew to be residents in the town, and the other four men were strangers to the town. A female usually attends to that room, the appellant taking a general superintendence; he was then in another part of the house, but had been in the refreshment room shortly before the respondent and the constable entered the room, and on two of the four residents coming into the room the appellant, before they were served with any refreshment, enquired if they were going by the train, to which they replied in the affirmative. The officers asked the waiter for the landlord, and she called for him, the officers proceeding into a lobby leading further into the house. Whilst the officers were there waiting for the landlord, the eight men each drank up his ale or wine and went by the gangway on to the station. There was a train due from Lancashire into Yorkshire at thirteen past eleven. The officers did not speak to any of the eight men, nor they to the officers. Two of the four residents resided within a quarter of a mile of the hotel, and the other two within half a mile, and all of them appeared to be healthy and active men. The appellant has resided at Todmorden, and kept this hotel several years. After a short interview between the officers and the landlord, in the course of which the landlord pointed the officers to a printed notice hung in a conspicuous part of the room, the officers told him the names of the four residents, and said they should be obliged to report him to their superior officer, and in reply he said he could not blame them for doing their duty. The officers returned by the gangway to the station, and saw one of the four residents go from the platform into the ticket office, and then return and cross over the rails on to the platform for Yorkshire; he and two other of the four residents and the strangers all went by the train. It was several minutes after the train was due, and ought to have started for Yorkshire, when this resident went into and returned from the ticket office;



but a railway official always rings a bell when a train is about a mile distant; the train stops at a station distant a little above two miles from Todmorden, and afterwards about every two or three miles to Wakefield, Leeds, or Bradford. When the train departed one of the four residents left the station, and returned towards his home in Todmorden, he having come to see a son off by the train who resided at a distance, and had been on a visit to his father, and two others of the four were seen by the officers walking in the town of Todmorden between two and three o'clock in the afternoon of the same day.

5. The officers then returned to the hotel, and told the appellant they had seen one of the four men (whose name they mentioned) leave the station and return into the town, and the other three go off by train. The officers had seen some of the four in the town shortly previous to seeing them walk along the gangway into the hotel. When the officers told the names of the four men, whom they knew, they asked the appellant if he considered them travellers. His reply was, that if they either came or went by train he considered them travellers, and he asked the waiter if he had not given her directions not to give out refreshments on Sundays during the prohibited hours, without first asking whether they had come or were going by train. She replied that he had given such directions to her, but she failed to ask the question from the two residents who came in after the appellant left the room. The outer doors to the other parts of the hotel were all closed. The following is a copy of the printed notice before referred to:—

“NOTICE TO THE PUBLIC.

“The following clause is in the new Wine and Beerhouse Licensing Bill, and subjects each person present in a licensed house at illegal hours to a penalty of forty shillings:—‘Where any person licensed under any of the said recited Acts to sell beer, cider, or wine by retail, or any person licensed under the said Act of the ninth year of the reign of King George the Fourth, is convicted of keeping his house open for the sale of or of selling beer, cider, wine, spirits, or any other

exciseable liquor, or of suffering the same to be drunk in such house at any time during which such house ought by law to be closed, any person (other than the servants or inmates of such house) present in such house at such time, shall, unless he account for his presence to the satisfaction of the justices, having cognizance of the case, be liable on summary conviction to a penalty not exceeding forty shillings for each offence.’

“Refreshments are supplied in this room on Sundays (during prohibited hours) to those persons only who are travelling to or by train. All those who may fictitiously obtain them will subject themselves to penalties imposed as above mentioned.”

6. None of the four residents had come by train, and none of them were waiting for friends to come by that train, and the train was only a few minutes late.

7. We found, as a fact, that none of these four residents were travellers, and were of opinion and adjudged that none of them required or needed refreshment, and to none of them, especially to the one who did not go by the train, but came from his house to see his son go and then return home, was the ale or sherry, which they drank, refreshment to them in the proper interpretation of refreshment as applied to travellers; that it was in fact tipping, and we were of opinion that they could not nor could any of them have maintained an action against the appellant if he had refused to fill to them respectively the ale and sherry on their tendering the price.

8. The attorney for the appellant argued contrary to the conclusions stated in the seventh paragraph, and cited several decisions in support of his argument, but we held that none of those decisions governed this case, the facts in the several cases cited being different to those found by us in the present case. A fourth magistrate, who sat with us, thought that the information ought to be dismissed.

9. The questions of law arising on the above statement for the opinion of this Court, therefore, are:—

First—Whether the said four residents were all travellers as intended by the Act of Parliament.

Second—Whether the said ale and wine were refreshment taken, and needed by them as travellers.

10. If the Court should be of opinion that the said conviction was legally and properly made, and the appellant is liable as aforesaid, then the said conviction is to stand, but if the Court should be of contrary opinion, then the said information is to be dismissed.

*Gray*, for the appellant.—The justices are to state the facts and the reasons of their decision, not to state the question of law, and if they do the Court are not bound down to it. The information was for opening the house improperly, but there was no evidence that it was not opened *bona fide*, on the contrary, the evidence shews it was, and if any person not being a traveller was among those served, he was liable. And the case is on all fours with *Peaches v. Colman* (1).

*Hopwood*, for the respondent.—The justices with the witnesses before them, and their local knowledge, may have well concluded that the appellant in truth was intending to evade the law, and, as pointed out in *Taylor v. Humphries* (2), the Court ought greatly to rely on the local knowledge of the justices. And as respects *Peaches v. Colman* (1), Willes, J., states that the question there was only whether the justices were bound to convict.

*Gray*, in reply.

WILLES, J.—I am of opinion that the conviction should be quashed. It is important to give effect to laws providing for the sanctity of the day of rest, but this must be done by fair means, and not by inflicting a penalty where there is no intention to do wrong and a man does his best to serve only *bona fide* travellers, the statute making an exception as to travellers and letting a *bona fide* traveller have refreshment. If the landlord opens his house under circumstances where no explanation of it appears, one may conclude that he opens generally, and he might be called on to explain. Such may be the case where the house is out of the way of travellers, and the persons coming

to it would most likely be residents in the neighbourhood. But here the place was a refreshment-room at a railway station to which persons would naturally resort when on a journey, and of the persons present four were strangers who went by train, three, who resided near, also went by train, and one, who also resided near, came to see his son off, and the transaction was shortly before a train started. *Prima facie*, therefore, the house was open to sell drink to travellers, because it was at a railway station, and there was nothing in the persons to shew they were not travellers, and there is no reason to conclude as to the three that they went by train merely to evade the law, and even if they were not *bona fide* travellers, yet the landlord may have opened honestly for travellers, and what is there to shew that he was aware that they had no business to be there? I agree, if negligence to separate travellers from others be shewn, there is evidence that the house was open to sell drink illegally. Gross negligence or want of precaution in this matter would be evidence of guilt, but there is nothing of the sort here. There was a notice placed conspicuously; there were directions to the servant, and inquiries in fact made; there was an absence of intention to break the law, or of misconduct which would be evidence of a design to evade it; and therefore, passing over the questions in paragraph 9, and addressing myself to paragraph 10, I am of opinion that the conviction was not legally and properly made, and should be quashed, because it appears to me there was no evidence on which the justices could properly convict, no evidence that the appellant did not open his house lawfully to sell refreshments to travellers.

KEATING, J.—I am of the same opinion. No doubt if the facts shewed, and the justices had found, that the appellant's conduct was colourable, that there was no *bona fides*, and that tipping was going on by his consent, there would be strong evidence to shew that he opened his house illegally. But there is nothing to shew that the landlord knew there was any breach of the law. There was a notice, there were directions to the servants (which were followed out except

(1) 35 Law J. Rep. (N.S.) M.C. 118.

(2) 34 Ibid. 1.

as to two persons), and the amount of the refreshment and position of the parties standing at the counter having a glass of beer or sherry,—just the position of travellers going by train,—presented nothing to challenge the notice of the landlord, and therefore it seems to me there was nothing to shew knowledge on the part of the landlord that the persons were not *bona fide* travellers. Their taking tickets was not material, as here it is not a question as to them, but as to the mind of the landlord, and improper knowledge by him, which should be clearly shewn. I think the conviction is wrong, and in so deciding I attend not to the questions submitted by the justices, but to paragraph 10 of the case.

MONTAGUE SMITH, J.—I am of the same opinion, and think there is not sufficient evidence to support the conviction. It is not found, and it does not appear by the evidence, that the appellant opened his house except for travellers, and as four were travellers beyond doubt it might have been opened for them, and the justices do not find that he knew that the other four were not travellers, and on the facts I think there is nothing to shew he did know, or that he did not care to know; all the facts are consistent with *bona fides*. It is said four were seen in the town a few hours after, but the landlord can hardly be bound to inquire as to the length of a man's journey, and persons going by railway are *prima facie* travellers.

[Gray asked for costs.]

WILLES, J.—The decided cases have either been so misunderstood or not acted on, and we have had to reverse so many convictions under this statute, that though we shall not give costs in this case as we do not desire to act without giving warning, in future we shall give them. We desire it to be distinctly understood that the burthen of proof is on the prosecution, and that in future, in quashing the conviction in these cases, we shall do so with costs.

*Conviction quashed.*

Attorneys—Richards & Walker, agents for James Stansfield, Todmorden, for appellant; Shaw & Tremallen, agents for A. G. & T. Eastwood, Todmorden, for respondent.

NEW SERIES, 39.—MAG. CAS.

1870.  
May 11, 12; } THE QUEEN v. THE JUSTICES OF SURREY.  
June 30. }

*Highway—Notices preliminary to Order for Stopping up Highway—Certiorari—Person aggrieved—27 & 28 Vict. c. 101. s. 21; 5 & 6 Will. 4. c. 50. s. 85.*

By 5 & 6 Will. 4. c. 50. s. 85, justices are empowered to view highways which it is proposed to divert or stop up, and to certify that they are unnecessary, upon proof that a notice in a prescribed form has been affixed at the place and by the side of each end of the highway from which the same is proposed to be diverted or stopped up. By 27 & 28 Vict. c. 101. s. 21, the proceedings under the former Act may be adopted for the purpose of certifying that a highway is unnecessary for public use. Three roads, each in a separate parish, formed one system, and consisted of three limbs, running from three turnpike roads at the points A, B, and C, and meeting at a central point D, so as to form a figure like that of the capital letter Y. The justices, purporting to act under 27 & 28 Vict. c. 101. s. 21, made three certificates as to each of the three highways. The roads referred to in the certificates were described, one as running from D to A, another as running from D to B, and a third as running from D to C. The certificates also recited that the requisite notices had been given. It appeared that a notice was placed at the points A, B, and C, but not at the central point D. The certificates having been affirmed on appeal to the sessions,—Held, that a certiorari must issue for the purpose of quashing the orders of sessions, as each of the three orders related to a separate highway, one end of which was at D, so that the prescribed notices had not been given, and the certificate was invalid.

The applicant for the certiorari resided in the neighbourhood of the highways to which the certificates related:—Held, that, by reason of his residence, he was in the condition of a person grieved, and entitled to the certiorari as of right.

Rule for justices of Surrey, and the highway board for the district of Blackheath, to shew cause why a certiorari should not issue to bring into Court the

U

orders made at the December Quarter Sessions, 1869, upon four appeals, touching the enrolment of four certificates made by two justices of Surrey, and also the certificates themselves, upon the ground that the certificates were void, and that the notices required by the statutes had not been affixed at the places required by law.

It appeared that the certificates and orders were under 27 & 28 Vict. c. 101. s. 21 (1); and each of them, after reciting an application from the highway board, requiring the justices to view the highway mentioned in it which the board considered unnecessary for public use, and that the justices had viewed it, and were of that opinion, and that they had directed the notices required by the statute to be given, and that they were satisfied that they had been given, certified that the highway named in the certificate was unnecessary for public use.

(1) By 5 & 6 Will. 4. c. 50. s. 84, the chairman of a vestry may direct the surveyor of highways to apply to two justices to view any highway the vestry may deem expedient to divert or stop up. By s. 85:—"If it shall appear upon such view of such two justices that any public highway is unnecessary, the said justices shall direct the surveyor to affix a notice in the form and to the effect of schedules (No. 19) to this Act annexed, in legible characters, at the place and by the side of each end of the said highway from whence the same is proposed to be turned, diverted, or stopped up," and also to insert a notice in the newspaper, &c. "And the said several notices having been so published, and proof thereof having been given to the satisfaction of the said justices," and a plan having been delivered to them, &c. "the said justices shall proceed to certify under their hands the fact of their having viewed the said highway as aforesaid," . . . and that the same is unnecessary.

By 27 & 28 Vict. c. 101. s. 21:—"When any highway board consider any highway unnecessary for public use, they may direct the district surveyor to apply to two justices to view the same, and thereupon the like proceedings shall be had as where application is made under the Highway Act, 1835 (5 & 6 Will. 4. c. 50. ss. 84-91), to procure the stopping up of any highway, save only that the order to be made thereupon, instead of directing the highway to be stopped up, shall direct that the same shall cease to be a highway which the parish is liable to repair, and the liability of the parish shall cease accordingly; and for the purpose of such proceedings under this enactment such variation shall be made in any notice, certificate, or other matter preliminary to the making of such order as the nature of the case may require."

The rule was obtained on affidavits by one Elliot, who appeared to be of Pain's Hill, Bromley, Surrey, in the neighbourhood of the highways to which the certificates related.

*Robinson, Serjt.*, and *Thesiger* shewed cause against the rule (on May 11).—This question arises under s. 21 of 27 & 28 Vict. c. 101, which provides that if a highway board consider a highway unnecessary for public use, it may apply to two justices, who may direct that it shall cease to be a highway which the parish is liable to repair. The section refers to 5 & 6 Will. 4. c. 50; and by s. 85 of that Act, the justices who view the highway are to direct the surveyor to affix a notice by the side of each end of the highway to be stopped up. It is said that this direction has not been complied with in the present instance, and therefore that the whole proceedings are bad. But it is submitted that this is not so. A notice was put up at the end of each of the roads where it joined the turnpike road, and it was not necessary that any should be put up at Benbow Corner, where they all met. Practically, all the three roads constituted only one road, and although the justices thought proper to make three separate certificates, all might have been included in one, as is provided by s. 86 of 5 & 6 Will. 4. c. 50. The justices have found that the roads were unnecessary; and it is clear that no one could pass along them without seeing two of the notices, although there was none at Benbow Corner. The order was properly made, and, upon appeal, the sessions ordered the certificates to be enrolled. That being so, this Court will not interfere—See *The Queen v. Dayman* (2); *The Queen v. The Sheffield, Ashton-under-Lyne, and Manchester Railway Company* (3). Again, in such a case, the Court will not receive affidavits—See, per Coleridge, J., in *The King v. The Justices of Cambridgeshire* (4). And further, the writ of *certiorari* is discretionary, and this is not a case in which the Court will, in

(2) 26 Law J. Rep. (N.S.) M.C. 128.

(3) 11 Ad. & E. 194; s. c. 9 Law J. Rep. (N.S.) Q.B. 13.

(4) 4 Ad. & E. 111.

its discretion, allow the writ to go—See *The Queen v. The Manchester and Leeds Railway Company* (5). In *The Queen v. Newborough* (6), Lush, J., and Hayes, J., refused to grant a *certiorari* to bring up an order of justices for the expenses of special constables, although the constables had not been appointed in the manner pointed out by the Act. Much more ought it to be refused in this case.

*Gates*, in support of the rule.—The notices have not been affixed at the places required by law. It is quite clear that Benbow Corner must be treated as one end of each of the three highways, and there is nothing in the statute to dispense with a notice there. The orders have, therefore, been made without jurisdiction, and are so far prejudicial to the applicant, who is a resident in the neighbourhood of the roads, that he is entitled to a *certiorari*.

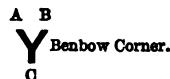
*Cur. adv. vult.*

The judgment of the Court (7) was (on June 29) delivered by

BLACKBURN, J.—This was a rule originally moved to shew cause why a *certiorari* to remove into this Court for the purpose of quashing them, the orders of sessions made upon four appeals touching the enrolment of four certificates made by two justices of Surrey, relating to four highways in the four parishes of Alfold, Dunsfold, Bromley, and Hascomb.

The rule was refused as to the Alfold highway, but by inadvertence it was drawn up as to all four. This was admitted on the argument, and, so far as relates to the road in that parish, the rule must be discharged. But as to the other three certificates, the Court took time to consider, on a point which it is not easy to make intelligible without reference to a map. The roads in those three parishes formed one system, running from three turnpike roads, and forming a figure like that of a capital letter Y. The spot where the three limbs of this road met was called Benbow Corner. The three ends where the limbs met the respective turnpike

roads may be conveniently designated as A, B, and C.



The two justices made three separate certificates. The first described the road to which it referred as a road running "from Benbow Corner" to A. The second described the road to which it referred as running "from Benbow Corner" to B. The third described the road to which it referred as running "from Benbow Corner" to C.

Each certificate, after reciting an application from the highway board requiring them to view the highway mentioned in it, which the board considered unnecessary for public use, and that they had viewed it, and were of that opinion, and that they had directed the notices required by the statute to be given, and that they were satisfied that they had been given, certified that the highway named in the certificate was unnecessary for public use.

A separate appeal was lodged against the enrolment of each of these three certificates, but by agreement among the parties the three appeals were consolidated, and one jury tried the three; they found in favour of the highway board, and the quarter sessions consequently enrolled the three certificates, and ordered that the roads should cease to be highways which the parishes were liable to repair.

These certificates were made under s. 21 of the Highway Act, 1864 (27 & 28 Vict. c. 101), which directs that "the like proceedings shall be had as when an application is made under the Highway Act, 1835, to procure the stopping of any highway," *mutatis mutandis*.

This refers us to 5 & 6 Wm. 4. c. 50. ss. 84-91. By s. 85 it is provided, that after holding their view, the two justices shall direct the surveyor "to affix a notice in the form and to the effect in the schedule (No. 19) to this Act annexed, in legible characters at the place and by the side of each end of the said highway, from whence the same is proposed to be turned, diverted, or stopped up," and in newspapers, and on the church doors, &c. "And such notices having been so published, and proof thereof having been given to

(5) 8 Ad. & E. 413.

(6) 38 Law J. Rep. (N.S.) M.C. 129.

(7) Cockburn, C.J., Blackburn, J., and Mellor, J.

their satisfaction, the justices shall proceed to certify."

We think it clear that the actual publication of the prescribed notices is made a condition precedent to the jurisdiction of the two justices, the obvious object of the legislature being to secure that everyone interested in the preservation of the highway should be aware of what was about to be done before it was done; and we also think it clear that the legislature have prescribed that the notices shall be placed at each end of the highway, so as to secure to every one who comes upon it the opportunity of reading the notice.

In the present case the highways which it was proposed to declare no longer repairable by the parishes formed one system, consisting of three limbs, joining the points A, B, and C, and meeting at a central point—Benbow Corner. The certificates described each limb of this system as a road from Benbow Corner to A, B, and C, respectively. All the notices were correctly given, except those required to be placed at each end of the road. As to these, in fact, a notice was placed at each of the three ends where the road joined the turnpike, the points A, B, C; but it was admitted that no notice was put up at Benbow Corner.

It was argued that the justices might have treated the whole system of highway from the three turnpikes as one highway, and included it in one certificate; but whether they could have done so or not, they have not done so, and each of the three orders must be treated as good or bad, just as if it was the only one; and each relates to a separate highway, one end of which was at Benbow Corner, and at that end of such highway no notice was affixed.

It was then argued that what really was done gave notice to the public quite as effectually as what the statute prescribed, as no one could pass along by Benbow Corner without passing two notices, one at each turnpike road, and so getting every information which he would have got had the notice been affixed at Benbow Corner; and that the applicant, in fact, knew of all that was done; and that there had been an appeal by a party grieved to the sessions; and that it is only after the

verdict of the jury was found against the appeal that he applies to this Court for a *certiorari*. And it was urged that the writ of *certiorari* was not of right, and that this Court, in its discretion, would not issue it to give effect to an objection certainly not affecting the merits.

On this we took time to consider, as the question to what extent the Court is bound to grant a *certiorari*, or may in its discretion withhold it, is one of great importance.

It is quite clear that, except when applied for on behalf of the Crown, the *certiorari* is not a writ of course. The Court must be satisfied on affidavits that there is sufficient ground for issuing it, and it must in every case be a question for the Court to decide, whether, in fact, sufficient grounds do exist. But in the present case we are satisfied that in fact no notice was affixed at Benbow Corner, and that, therefore, the orders complained of were made without jurisdiction, and the question arises whether this Court ought to refuse the *certiorari*.

In the very analogous case of prohibition a distinction is taken, thus expressed by Cockburn, C.J., in *Forster v. Forster* (8). He says: "I entirely concur in the proposition that, although the Court will listen to a person who is a stranger, and who interferes to point out that some other Court has exceeded its jurisdiction, whereby some wrong or grievance has been sustained, yet that is not *ex debito justitiæ*, but a matter upon which the Court may properly exercise its discretion, as distinguished from the case of a party aggrieved, who is entitled to relief *ex debito justitiæ*, if he suffers from the usurpation of jurisdiction by another Court."

The same distinction between an application by a party aggrieved and by one who comes merely as a stranger to inform the Court, is taken as to *certiorari* in *Arthur v. The Commissioners of Sewers* (9), where one of the judges said "that a *certiorari* was not a writ of right, for if it was it could never be denied to grant it, but it has often been denied by this Court, who, upon consideration of the circumstances

(8) 4 B. & S. 199; s. c. 32 Law J. Rep. (N.S.) Q.B. 314.

(9) 8 Mod. 331.

of cases, may deny it or grant it at discretion; so that it is not always a writ of right. It is true where a man is chosen into an office or place, by virtue whereof he has a temporal right, and is deprived thereof by an inferior jurisdiction who proceed in a summary way, in such case he is entitled to a *certiorari ex debito justitiæ*, because he has no other remedy, being bound by the judgment of the inferior judicature."

Where the party grieved has by his conduct precluded himself from taking an objection, the Court will not permit him to make it, as in *The Queen v. The South Holland Drainage Committee* (10).

In other cases where the application is by the party grieved, so as to answer the same purpose as a writ of error, we think that it ought to be treated, like a writ of error, as *ex debito justitiæ*; but where the applicant is not a party grieved who substantially brings error to redress his private wrong, but comes forward as one of the general public having no particular interest in the matter, the Court has a discretion, and if it thinks that no good would be done to the public by quashing the order, it is not bound to grant it at the instance of such a person. Thus in *The Queen v. Newborough* (6), where the application was made for a *certiorari* to bring up an order on the treasurer of the county of Carnarvon to pay 95*l.* 1*s.* 3*d.*, being the amount of certain allowances to, and expenses incurred in respect of special constables, but not till after the treasurer had paid the money and his accounts had been allowed at the sessions, so that the applicants, though ratepayers, could obtain no benefit from quashing the order, as the money could never be recovered back, Lush, J., and Hayes, J., then sitting in the Bail Court, thought they were not bound to grant the *certiorari*, though the order was informal and probably void. And we think they were right; but, as is distinctly stated by my brother Lush, the question would have been different, if the order had not been acted upon, and the money paid, and the accounts allowed.

We find no case inconsistent with this distinction, which we think is a sound one, and therefore we think that, in exercising

(10) 8 Ad. & E. 429.

our discretion, we must see whether the present applicant is in the condition of a person grieved, applying for the *certiorari* to remove an order made without jurisdiction which affects his interests; and we think he is.

In *The King v. Taunton, St. Mary's* (11), an indictment for not repairing a highway had been removed by *certiorari*, and the question was whether the prosecutors were parties grieved, so as to entitle them to costs. Lord Ellenborough says: "Certainly a person does not answer to the character of a person grieved who is only in common with the rest of the subjects inconvenienced by the nuisance; but here it appears that those persons have, by reason of their local situation, a peculiar grievance of their own."

This is exactly the position of the present applicant. And the continued existence of these orders at the quarter sessions would make it difficult to get a grand jury to find a bill of indictment against the parish, which, after all, would be an inconvenient mode of raising the objection to the validity of these orders.

The rule must therefore be made absolute so far as regards the three roads, but, as the rule must be discharged as to the other, without costs.

*Rule absolute, without costs.*

Attorneys—J. & M. Pontifex, agents for H. F. Day, Godalming, for prosecution; F. F. Smallpeice, agent for W. H. M. & F. F. Smallpeice, Guildford, for defendants.

1870. { THE WEST LONDON EXTENSION  
May 12. { RAILWAY COMPANY (*appellants*)  
v. THE ASSESSMENT COMMITTEE  
OF FULHAM UNION (*respondents*).

*Arbitration and Award—Power to give Costs—Reference of "Matter in Dispute"*  
—*Baines' Act*, 12 & 13 Vict. c. 45. s. 13.

By 12 & 13 Vict. c. 45. s. 13, power is given to any Court of quarter sessions before which any appeal (except against a summary conviction, &c.) shall be brought, to order, by consent, that the matter or matters of such appeal be referred to arbitration to such person or persons, and in such

(11) 3 M. & S. 462, 472.

*manner and on such terms, as the Court shall think reasonable and proper. Upon appeal to quarter sessions against a poor-rate, it was ordered that the "matter in dispute" should be referred to an arbitrator to inquire into and arbitrate thereon. By his award the arbitrator ordered that the appeal should be dismissed, and that the appellants should pay the respondents their costs of the appeal:—Held, that the award was irregular, and must be referred back to the arbitrator, as the order of sessions did not confer upon him the power of awarding costs.*

[For the report of the above case, see 39 Law J. Rep. (N.S.) Q.B. p. 178.]

[IN THE COURT OF COMMON PLEAS.]

1870. } STANLEY (appellant) v. MORT-  
June 23. } LOCK (respondent).

*Turnpike Road—Liability to Toll—Leaving a Carriage upon the Road—3 Geo. 4. cap. 126. s. 41.*

*The 41st section of 3 Geo. 4. c. 126, imposes a penalty on any person who, inter alia, "shall leave upon a turnpike road any horse, cattle, beast or carriage whatsoever," "whereby the payment of all or any of the tolls shall or may be evaded:—Held, that to constitute the offence of leaving a carriage within that section the carriage must be left waiting on the road.*

*Where therefore a carriage was driven on a turnpike road to within a short distance of a toll gate, when the owner got out and walked through the gate, and the carriage, instead of waiting, was driven back to the owner's residence,—Held, that such owner could not, for so acting, be convicted under the said 41st section of leaving the carriage on the road, whereby the payment of toll was evaded.*

CASE stated by Justices for the county of Cambridge, pursuant to 20 & 21 Vict. c. 43.

At a petty sessions at Caxton, in the said county, on 12th of October, 1869, the appellant was convicted by the said justices, on an information preferred under 3 Geo. 4. c. 126. s. 41, charging the appellant that he did, on 25th of September, 1869, leave upon the turnpike road, from Royston, in the county of Hertford, to Wandesford Bridge, in the county of

Huntingdon, a certain carriage or waggonette, drawn by two horses, by reason whereof the payment of tolls at the Old North Road gate was evaded, contrary to the said statute of 3 Geo. 4. c. 126, for regulating turnpike roads.

Upon the hearing of the said information, it was proved that there was a turnpike road situated in the parish of Longstowe, in the county of Cambridge, on the road leading from Royston to Wandesford Bridge, and that the respondent was the person duly appointed to collect the tolls at the said gate.

The case set out various provisions of the local Act, 3 Geo. 4. cap. 68, under which the tolls payable on the said road were collected, but they are not material for the purposes of this report.

It was also stated in the case that it was further proved that the said turnpike gate was situated about 100 yards from the Old North Road railway station, on the Bedford and Cambridge Railway, and that the appellant was, on the 25th of September, 1869, with some of his friends, driven by his coachman in a waggonette, drawn by a pair of horses, along the said road to within about 140 yards of the said turnpike gate, and that the said appellant and his friends then got out of the waggonette and walked through the said turnpike gate to the said railway station, carrying with them some small articles of luggage, but that the heavy portions of their luggage had been previously sent through the gate in a cart, the person in charge of which had paid the proper toll.

The waggonette was in charge of the appellant's coachman, and was by him driven back to the appellant's house. The said waggonette had, on the day in question, been driven upwards of a quarter of a mile in one direction, along the said turnpike road, between the appellant's lodge gate and the toll gate.

No toll was paid by the said appellant, nor demanded from the appellant, in respect of the said waggonette, because it was known to the respondent that the appellant wished to raise the question now raised.

The appellant left by the train, and did not return that day.

On these facts, the justices were of



opinion that there was nothing in the provisions of the local Act, 3 Geo. 4. cap. 68, to exempt the appellant from the payment of the toll; that the said local Act was passed prior to, and was itself amended and controlled by the general Act, 3 Geo. 4. cap. 126; that the appellant was not within the exemption allowed by section 32 of such general Act, and therefore that the appellant was, under the circumstances above stated, liable, under section 41, to pay toll for the said waggonette.

The question of law arising on the above statement of facts was, whether or not, under section 41 of 3 Geo. 4. cap. 126, the appellant was rightly convicted of leaving the said waggonette on the said road, whereby the payment of toll at the said gate was evaded.

*Graham*, for the appellant.—There was no leaving of the waggonette on the road, within the meaning of sec. 41 of 3 Geo. 4. c. 126. That section enacts, amongst various offences for which a penalty is to be incurred, the following:—"If any person shall fraudulently or forcibly pass through any such toll gate with any horse, cattle, beast or carriage, or shall leave upon the said road any horse, cattle, beast or carriage whatsoever, by reason whereof the payment of any tolls or duties shall be avoided or lessened; or shall take off, or cause to be taken, any horse or other beast or cattle from any carriage, either before or after having passed any toll gate, or having passed through any toll gate, shall afterwards add or put any horse or other beast to any such carriage, and draw therewith upon any part of any turnpike road, so as to increase the number of horses or other beasts drawing the said carriage after the same shall have passed through any toll gate, whereby the payment of all or any of the tolls shall or may be evaded." The latter words, "whereby the payment of all or any of the tolls shall or may be evaded," govern all the preceding part. No toll was here evaded by the appellant's carriage being stopped short of the toll gate, but only the liability to pay toll was avoided. That difference is pointed out in *Veitch v. Trustees of the Exeter Turnpike Road* (1). The appellant here did

(1) 27 Law J. Rep. (n.s.) M.C. 116.

not leave the carriage, but the carriage left him, it being driven back to the appellant's house.

[WILLES, J. — "Leave" within the meaning of the 41st section means "leave awaiting."]

Yes, and here there was no such leaving.

*Naylor*, for the respondent.—In this case the appellant's waggonette had gone more than 100 yards along the said turnpike road, and therefore the appellant by getting out and leaving his carriage, after having so used the road, evaded the toll within the meaning of section 41 of the statute.

[KEATING, J. — Suppose, instead of getting out of the carriage, the appellant had turned his carriage round, and driven home?] He would still have been liable to toll. The implication from *Veitch v. Trustees of the Exeter Turnpike Road* is that if the appellant in that case, instead of going only eighty-four yards along the road before he turned off, had gone 100 yards, the decision would have been different. If a person does not use the road for 100 yards he is not liable to toll, even although he drives his carriage through the toll gate—*The Queen v. Gerrard* (2). In that case, *Phipson v. Harvett* (3) is cited as shewing the liability where more than 100 yards of the road is used. The toll, therefore, was incurred by the appellant's having travelled more than 100 yards on this said turnpike road, and his leaving his carriage was only the mode by which he evaded paying the toll he had so incurred.

*Graham*, in reply.—The charge in the information against the appellant is for leaving the carriage, and not for evading paying a toll which had been incurred by using the road for more than 100 yards. Such point cannot now be raised.

WILLES, J.—I am of opinion that this conviction must be quashed. We must take the information, and see if the offence there charged has been committed. That offence is that the appellant did leave upon the turnpike road therein specified a cer-

(2) 26 Law J. Rep. (n.s.) M.C. 148.

(3) 1 Cr. M. & R. 473; s. c. 4 Law J. Rep. (n.s.) Exch. 36.

tain carriage or waggonette drawn by two horses. The facts, as proved, were that the appellant, wanting to go to the Old North Road Railway Station, was driven in his waggonette more than 100 yards upon the turnpike road in question, and when within about 140 yards of the turnpike gate he got out and left his carriage, directing his coachman to drive home, and did not return to his carriage, but went through the toll gate to the railway station, and then left by the train. He did not leave the carriage in the sense of leaving it on the road to await for him, but all he did was to leave the carriage. The real question therefore is, whether the expression, "leave a carriage upon a road," means in the statute merely quitting a carriage whilst it is on the road, or whether it means leaving a carriage waiting on the road. I think that the last is the meaning according to the true construction of the statute. Such a construction avoids the consequences which would otherwise arise if the first of these meanings were to be given to the words in the Act. One of such consequences would have been that any person who, having driven on a turnpike road, found himself afterwards inclined to leave his carriage and walk, would still be bound to pay toll. The case coming within these words of the enactment would probably be where a person has taken the horses or some of them out of the carriage and has gone through the toll gate with them, leaving the carriage or horses, as the case may be, waiting on the road. But without, however, going further, it is sufficient to say that leaving a carriage within the meaning of this statute means leaving it waiting on the road, and that in the absence of anything like that in the present case, this conviction ought to be quashed.

KEATING, J.—I am of the same opinion. It is not necessary to determine some of the questions which were raised during the argument. All we have to do is to say whether the conviction was right, that is, whether the facts were such as strictly to bring the appellant within the words relied on of the 41st section of 3 Geo. 4. c. 126. I say strictly, because the section is penal. Now I agree with my brother Willes as to the construction of the words in that

section. I think "leave upon the road any carriage" does not import simply quitting the carriage, but leaving the carriage waiting on the road whilst the occupier of it goes through the toll gate. The facts of this case shew that there was no leaving of the carriage on the road within the meaning of the enactment, according to the construction we have put on it, and therefore the conviction was wrong.

MONTAGUE SMITH, J.—I am of the same opinion. To support this conviction, this offence must be, according to the statute, leaving a carriage on the road, whereby payment of toll was evaded. The offence therefore consists of two things—first, leaving a carriage on the road, and, secondly, the effect of that leaving must be the evasion of the payment of toll. It appears to me that the overt act in this case was not established. Leaving a carriage on the road, within the meaning of the Act, seems to me to mean leaving a carriage waiting on the road. If a man gets out of a carriage, and the carriage does not remain after he has left it, such leaving is not a leaving within the meaning of the 41st section. It is not necessary to determine what it is which comes within that section. As I understand it, if a carriage were left on the road whilst the owner went through the toll gate, and got what he wanted in the adjoining town, and then returned to such carriage which had been so kept there until he returned, such leaving might be a leaving within that section. But it is unnecessary for us to determine that, or to determine whether toll may be taken of a person who has passed upwards of 100 yards along a road, but has not gone through a toll gate. That last seems not to be imposed by the Act; indeed, if Mr. Naylor be right, the information need not have been laid under the 41st section, but simply for not having paid toll. It is, however, sufficient to say that the conviction was wrong.

*Conviction quashed.*

---

Attorneys—J. & C. Cole, agents for E. Foster, Cambridge, for appellant; F. & T. Smith & Sons, agents for H. Mortlock, Caxton, for respondent.

---

## IN THE COURT OF QUEEN'S BENCH.]

1870. { THE QUEEN ON THE PROSECUTION  
June 11. { OF THE GUARDIANS OF THE  
HENLEY UNION (*appellants*)  
v. THE GUARDIANS OF THE  
ABINGDON UNION (*respondents*).

*Order of Removal—Irremovability—  
Break of Residence—9 & 10 Vict. c. 66  
—24 & 25 Vict. c. 55.*

*The pauper, a bastard, was born in the appellant union, where his mother afterwards married, the pauper living with and being maintained by her and his stepfather there until their subsequent removal to the respondent union in June, 1861, where they have since resided, and whither he removed with them. In 1862, being then upwards of 15 years of age, the pauper was elected and admitted a pupil in the "School for the Indigent Blind," in St. George's Fields, Southwark, the said school being a charitable institution supported by voluntary subscriptions, out of the funds of which the pupils are gratuitously clothed, maintained and educated. On the 19th of June, 1868, being then upwards of 21 years of age, he was discharged in accordance with the regulations of the school, and returned to his mother and stepfather, by whom he was maintained and lodged as before, until March, 1869, when he became chargeable to the respondent union. An order having been obtained for his removal to the appellant union,—Held, that he had acquired the status of irremovability, and therefore could not be removed.*

On appeal against an order of two justices for the removal of Walter Hopkinson from the Abingdon Union, in the counties of Berks and Oxford, to the Henley Union, the sessions quashed the order, subject to the following CASE.

The pauper, Walter Hopkinson, was born in the parish of Rotherfield Greys, in the county of Oxford, in the appellants' union of Henley-on-Thames, on the 13th of January, 1847, being the bastard child of one Jane Hopkinson, a single woman, then residing in Rotherfield Greys.

On the 10th of November, 1858, Jane Hopkinson, the pauper's mother, was married to one William Roberts at Henley-on-Thames. She continued to reside with

her husband at Henley-on-Thames for more than a year after her marriage, and then removed with him to Reading, where they resided till the 16th of June, 1861, when they removed to Littlemore, in the county of Oxford, in the respondent's union, where they have resided ever since. The parish of Littlemore is not the parish of settlement of the said William Roberts.

The pauper lived with his mother and stepfather, and was maintained by them until the 5th of August, 1862, when he was duly elected and admitted a pupil at the "School for the Indigent Blind," in St. George's Fields, Southwark, being then about 15 years and six months old. The said school, which is maintained for educational purposes only, is a charitable institution supported by voluntary contributions, and is under the management of a committee. The pupils are elected by the votes of the subscribers, and are lodged, clothed, fed and taught out of the funds of the institution. They are discharged by the committee when they are sufficiently instructed, or when they attain the age of 21 years, and are also removable for misconduct.

The pauper remained at the school as a pupil until the 19th of June, 1868, when he was discharged by order of the committee, being then more than 21 years old. During his residence there the pauper was wholly supported, maintained, lodged and fed out of the funds of the school, and neither his mother nor stepfather contributed to his support during such residence, but he went to them at Littlemore and stayed with them for five weeks in the summer of each of the years 1863, 1864, and 1865, and for six weeks in the summers of 1866 and 1867; the last of such visits terminated in the autumn of 1867. During each of these periods he was supported, maintained, lodged, washed for and fed by his mother and stepfather.

After his discharge from the school, the pauper returned to Littlemore, being then over 21 years of age, having no other place to return to; and remained at Littlemore with, and was supported, clothed, lodged and fed by his said mother and stepfather till the month of March, 1869, when he became chargeable to the respondents' union, never having done any act to

acquire any settlement other than his birth settlement aforesaid.

On the 10th of May, 1869, the guardians of the respondents' union obtained an order for the pauper's removal to the appellants' union, against which this appeal was made, and upon the hearing of such appeal, the above facts were admitted or proved, and the Court thereupon drew the inference that there was an *animus revertendi* in the pauper, and adjudged that the pauper had, under the circumstances, constructively resided with his mother and stepfather in the said parish of Littlemore for more than one year next before the making of the said order without receiving relief, and was therefore irremovable therefrom.

If the Court should be of opinion that the above inference and the judgment of the justices were right in law respectively, the order of the justices is to be confirmed with costs; if otherwise, the order of sessions to be quashed, and the order of removal confirmed with costs.

*Pater* appeared for the appellants; but the Court called upon

*Harington* (*J. R. W. Bros* with him) for the respondents.—The pauper's mother and stepfather were under no obligation to receive him on his discharge from the School for the Indigent Blind; and therefore no question of *animus revertendi* can arise, inasmuch as he had no home of his own to return to—*The Queen v. Glossop* (1).

[BLACKBURN, J.—In that case the return of the servant depended on a very remote contingency. COCKBURN, C.J.—Is there any legal distinction between the home of a person in the rightful sense of the term and a home into which he is adopted? The pauper lived continually with his mother and stepfather up to the time of his admission into the school, and returned to them with their full concurrence when his connection with the school ceased.]

Even supposing the residence of his mother and stepfather to have been in the first instance his home, his absence from it during the time he remained at the

school was a break of residence. This is not like the ordinary case of a child placed away from home for educational purposes at the charges of his parents; the school in this instance was a charitable institution, out of the funds of which the pauper was entitled to be supported, and was during his connection with it for all purposes his home.

COCKBURN, C.J.—I am of opinion that the facts of this case disclose a constructive residence by the pauper in the home of his mother and stepfather. Up to the time of his admission into the school for the blind he resided with them, and it is clear that he always intended, whenever his connection with the school should cease, to return to them, as eventually he did. I see no distinction between a charitable institution, as this school appears to be, and a school in the ordinary sense of the term, and clearly the placing of a child away from home for educational purposes cannot be considered as constituting a break of residence.

BLACKBURN, J.—I am of the same opinion. It is clear that up to the 5th of August, 1862, when the pauper was removed to this institution, his home was that of his mother and stepfather; and I see nothing which warrants us in saying that the pauper ever changed or intended to change that home for another. On the contrary, the circumstances of the case seem to lead to an entirely different conclusion. The pauper ceased to reside with his mother and stepfather, only because an opportunity of education in this school (whether a charitable institution or not makes no difference) was afforded him; and, which seems to me a strong fact in the case, whenever he obtained his annual leave of absence he invariably returned to his former habitation for the purpose of spending his holiday. The sessions have drawn the inference that there was an *animus revertendi* on the part of the pauper, and we must take it that there was evidence to support that inference.

MELLOR, J.—I am of the same opinion. It is clear that an understanding existed between the pauper, his mother, and stepfather, that their place of residence should be his also, and abundant evidence of that

(1) 35 Law J. Rep. (N.S.) M.C. 148; s. c. Law Rep. 1 Q.B. 227.

understanding is furnished by the fact of his repeatedly returning to it at the intervals when his absence from the school was permitted.

LUSH, J.—As between the pauper, his mother and stepfather, it is clear that an understanding existed that their place of residence should be his; and therefore I think that, upon the facts, the sessions were right in drawing the conclusion they did.

*Order of sessions confirmed.*

Attorneys—Pattison, Wigg & Co. for appellants;  
Dale & Stretton for respondents.

[IN THE COURT OF QUEEN'S BENCH.]

1870. } THE BRUTON TURNPIKE TRUSTEES,  
June 11. } appellants, v. THE WINCANTON  
HIGHWAY BOARD, respondents.

*Turnpike Road Trust—Application of Tolls.*

By a turnpike Act it was enacted that the trustees should apply the moneys arising from tolls, &c., in the first place in defraying the expenses of obtaining the Act, and "in the next place in paying and discharging all interest now due, and owing, and which shall hereafter become due and owing upon any mortgage, &c., of the tolls hereby granted, and in defraying the expenses of building toll-houses, &c.; and in defraying the expenses of altering, improving, repairing, &c., the said roads." The trustees provided for interest accruing in respect of money borrowed upon security of the tolls, and arrears of interest, and no balance remained in their hands which was available for repairs. The road being out of repair, an order of justices under 5 & 6 Will. 4. c. 50. s. 94, was made upon the trustees to pay a sum for its repair to the surveyor of the Highway Board:—Held, distinguishing *The Queen v. Hutchinson* (4 E. & B. 200; s. c. 24 Law J. Rep. (N.S.) M.C. 25), that the order of the justices was wrong.

CASE stated by justices, under 20 & 21 Vict. c. 43.

At a Petty Sessions holden for the Petty Sessional Division of Wincanton on the

27th September, 1869, an information was preferred by Benjamin Atwell, the surveyor of the Wincanton Highway Board (the respondents), against the trustees of the Bruton Turnpike Road (the appellants), charging that portions of a certain public highway defined in the information, being part of the appellant's turnpike road, were out of repair, and that the appellants were chargeable with the repairs thereof. The justices thereupon issued a summons against the clerk of the said appellants to shew cause why an order for the payment of the costs of the repairs of the said turnpike road should not be made upon him as clerk, as aforesaid.

Upon the hearing of the case, the clerk to the appellants objected that the justices had no power to make the order without first enquiring into the state of the funds of the trust, and ascertaining that the appellants had in their hands funds applicable for the purpose. Evidence was then given on the part of the appellants that after providing for the interest then accruing in respect of moneys borrowed on the security of the tolls, and for arrears of interest, and also for current simple contract debts then owing by the trust, there would be no balance in the hands of the treasurer. It further appeared that the deficiency was caused by the appellants having recently, and since the issuing of the summons, paid arrears of interest to the amount of 127l. 6s. 6d. It was also stated and found as a fact that the unsound condition of the turnpike road in question had been long known to the appellants, who had declined to repair the same upon the ground that they had no funds for the purpose in hand; and the respondents contended that upon the proper construction of section 12 of the Bruton Turnpike Roads Act (hereinafter set out), the trustees had no authority to pay arrears of interest in priority to the current necessary expenses for the repair of the road, but that an adequate portion of the money so apportioned by them to such arrears, ought to have been expended in repairs.

The justices made an order upon the appellants for the payment of 58l. 18s., which was found to be the costs of repairs, and 12l. 10s. for the costs of the respondents.

The question for the opinion of the Court was whether the appellants were bound to apply an adequate portion of the moneys arising from the tolls to the necessary annual current expenses of maintaining the road in repair in preference to apportioning such moneys to the payment of arrears of interest which had been carried over from the previous years.

*Pinder*, for the appellants.—This is a proceeding under 5 & 6 Will. 4. c. 50 (General Highway Act), sect. 94, and the question is whether the appellants as trustees of the Bruton Highway were justified in providing for the payment of arrears of interest in preference to the performance of necessary repairs of the road; the funds in their hands being insufficient for both purposes. By 1 Will. 4. c. lxvi. (Bruton Turnpike Act), s. 12, the tolls, &c., are to be applied, in the first place, in payment of the costs incurred in passing the Act, "and, in the next place, in paying and discharging all interest now due, and owing and which shall hereafter become due upon any mortgage or security of the tolls or duties hereby granted or made payable, and in defraying the expenses of building or erecting toll-houses, toll-gates, and toll-bars, with suitable out-building thereto, and of removing or altering the same or any of them, and in defraying the expenses of altering, raising, widening, improving, repairing and preserving the said roads; and lastly in reducing, paying off and discharging the several principal sums of money due on any such mortgage or securities as aforesaid, and also all other debts and sums now due, and owing and hereafter to become due and owing." The order appealed against was made by the justices upon the authority of *The Queen v. Hutchinson* (1), where out of the moneys in hand or afterwards to be received the trustees were directed, in the first place, to pay the costs of passing the Act, and to apply the remainder (after defraying certain specified expenses) "from time to time in keeping down the interest of the principal moneys advanced or borrowed on account of the roads, or which may be borrowed on the credit of the Act, and in

amending, making, altering, widening, improving and keeping in repair the said roads;" and lastly in the repayment of the principal moneys. There the Court held that the words "keeping down the interest" meant paying the annual interest as it accrued, and did not include the payment of arrears. The Act under which the present question arises expressly directs the payment of all interest due and to become due, and subsequently in the same clause provides for the repairs, &c., of the road; but without giving either branch of expenditure priority over the other; the cases are therefore distinguishable.

*F. Bailey*, for the respondents.—*The Queen v. Hutchinson* (1) is conclusive in favour of the order of the justices. Moreover, in delivering judgment in *The Queen v. The Trustees, &c., of the South Shields Turnpike Roads* (2), Lord Campbell, C.J., in delivering judgment, points out that since the decision in *The Queen v. White* (3) 13 & 14 Vict. c. 79. s. 4, has made a new appropriation of the funds of turnpike trustees by directing 5 per cent. on the amount of their debt due before the passing of 12 & 13 Vict. c. 87, to be set apart as a sinking fund after the payment of the interest on any moneys owing on account of the tolls, and all other annual liabilities.

*Pinder*, in reply, referred to the *Wear-dale District Highway Board v. Bambridge* (4).

BLACKBURN, J.—I am of opinion that the appellants are entitled to judgment. The section in question, after providing for the costs of obtaining the Act, directs in the second place the payment and discharge of "all interest now due and owing, and which shall hereafter become due upon any mortgage or securities of the tolls and duties granted or made payable," and then, without giving one head of expenditure priority over another, proceeds to provide, amongst other things, for the expenses of repairs; thus, as it

(1) 4 E. & B. 200; s. c. 24 Law J. Rep. (N.S.) M.C. 25.

(2) 3 E. & B. 599; s. c. 23 Law J. Rep. (N.S.) M.C. 134.

(3) 4 Q.B. Rep. 101; s. c. 12 Law J. Rep. (N.S.) M.C. 31.

(4) 35 Law J. Rep. (N.S.) M.C. 173; s. c. Law Rep. 1 Q.B. 396.

seems to me, leaving the trustees a discretion as to the order of disbursement of the moneys in their hands. In *The Queen v. Hutchinson* (5) the words "keeping down the interest" were held to mean the payment of the annual interest as it accrued, and not to include the payment of arrears; but the present Act distinctly authorises the payment of interest due and hereafter becoming due. I regret to say, therefore, that the justices were wrong in their construction of the Act.

MELLOR, J., concurred.

LUSH, J.—There is a material difference

between the way in which this matter is dealt with in these two Acts. "Keeping down the interest" can apply only to current interest, but the terms "all interest now due and owing, and which shall hereafter become due" are much more extensive, and I think upon the true construction of the Act the appellants were justified in the course they took.

*Judgment for the appellants.*

Attorneys—Dyne & Harvey, agents for H. Dyne, Bruton, for appellants; Whites, Renard & Floyd, for respondents.

(5) 4 E. & B. 200; a. c. 24 Law J. Rep. (n.s.) M.C. 25.

# INDEX

## TO THE REPORTS OF CASES

### CONNECTED WITH

## THE DUTIES AND OFFICE OF MAGISTRATES.

MICHAELMAS TERM, 1869, TO MICHAELMAS TERM, 1870.

- ABANDONING CHILDREN**—so as to endanger life. See Children.
- ACQUITTANCE OR RECEIPT.** See Forgery.
- AIDING AND ABETTING**—in an attempt to rape. See Indictment.
- ALE AND BEER HOUSE**—*value where the house is in a township of less than 10,000 inhabitants, but in a parish of more*—A beerhouse situated in a township having a population of less than 10,000 inhabitants, according to the last parliamentary census, must, if such township be within a parish containing more than 10,000 inhabitants, be rated at one sum to the rate for the relief of the poor of the township in which such house is situate on a rent or annual value of fifteen pounds per annum at the least, or otherwise the license is null and void under the 3 & 4 Vict. c. 61. s. 1. —Mellor, J., *hæsitante*. *Preston v. Buckler*, 105 — Conviction for second offence under 32 & 33 Vict. c. 27. s. 17. See Conviction.
- Sunday Trading. See Public House.
- AMENDMENT**—of commitment. See Habeas Corpus.
- APPEAL**—when it lies. See Highway.
- Service of notice of appeal. See Excise.
- Imprisonment for non-payment of costs of appeal. See Debtor and Creditor.
- ARBITRATION**—*power to award costs on reference by sessions of matter in dispute*—An order of sessions for a reference of the “matter in dispute” to an arbitrator to inquire into and arbitrate thereon, does not give the arbitrator power to award costs. *West London Extension Rail. Co. v. Assessment Committee of Fulham Union* (Q.B. 178), 149
- ASSAULT**—Conviction for, on indictment for carnally abusing a girl between ten and twelve. See Indictment.
- Ouster of jurisdiction of justices. See Jurisdiction.
- BASTARDY**—Costs on appeal. See Debtor and Creditor.
- BEERHOUSE.** See Ale and Beer House.
- BILLIARDS**—*license: prohibition of exciseable liquors: beer not an exciseable liquor*—By the terms of the license granted for keeping a house for public billiard playing given in the schedule to 8 & 9 Vict. c. 109, it is provided that the licensee “do not knowingly allow the consumption of exciseable liquors therein.” By 11 Geo. 4. and 1 Will. 4. c. 57, the excise duty on beer which had previously been charged was repealed; and it was expressly provided that the hereditary duties thereon should not be collected during the reign of his Majesty:—*Held*, that beer is not an exciseable liquor within the meaning of the prohibition in a billiard license.—*Lancashire v. The Justices of Staffordshire* followed. *Jones v. Whittaker*, 139
- BILLS OF SALE ACT**—False affidavit under. See Perjury.
- BRIDGE**—*liability to repair as a highway or as a county bridge*—A public bridge repairable by immemorial custom by the inhabitants of a hundred, is not a highway within 5 & 6 Will. 4. c. 50. s. 5, which enacts “that the word ‘highways’ shall be understood to mean all roads, bridges (not being county bridges), carriage-ways,” &c.; but such bridge is a county bridge, and repairable by the hundred, within the exception of county bridges. *Reg. v. The Inhabitants of the Upper Half Hundred of Chart and Longbridge*, 107
- BUILDING SOCIETY.** See Forgery.
- CERTIORARI.** See Highway.
- CHILDREN**—*abandonment and exposure of, endangering life*—The prisoners were convicted on an indictment which charged that they did abandon and expose a child, under the age of two years, whereby the life of the child was endangered.



The indictment was framed on the 24 & 25 Vict. c. 100. s. 27. One of the prisoners was the mother of the child, which was illegitimate, and both the prisoners put the child in a hamper at S., wrapped up in a shawl, and packed with shavings and cotton wool, and the mother took the hamper to the booking office of the railway station at M., and left it, having paid the carriage of it to G. The hamper was addressed to the lodgings of the father of the child at G. She told the clerk at the office to be very careful of it, and to send it by the next train, which was due in ten minutes from that time. Upon the address were the words written, "With care; to be delivered immediately." The hamper was carried by the passenger train, and was delivered at its address in a little less than an hour from leaving M. On its being opened the child was found alive. The child was taken by the relieving officer the same evening to the union work-house, where it lived for three weeks afterwards, when it died from causes not attributable to the conduct of the prisoners, or either of them. It was proved to have been a delicate child:—*Held*, by a majority of the Judges, that the conviction was right. *Reg. v. Falkingham*, 47

— Conviction for assault on indictment for carnally abusing. See Indictment.

**COUNTERFEITING**—procedure on trial for knowingly having counterfeit coin in possession after a previous conviction for uttering. See Practice.

**COMMITMENT**—amendment of. See Habeas Corpus.

**CONCEALMENT OF BIRTH**—*secret disposition of the dead body*]—Prisoner put the dead body of her child over a wall, which was four and a half feet high, and divided a yard from a field. The yard was at the back of a public-house, and entered from the street by a narrow passage. Prisoner did not live at the public-house, and must have carried the body from the street up the passage to the yard. The field was grazed by the cattle of a butcher, and the only entrance to it was through a gate leading from the butcher's own yard. There was no path through the field, and a person in the field could only see the body in case they went up to the wall, close against which the body lay. A little girl, picking flowers in the field, found the body of the child, twenty yards from the gate. There was nothing on or over the body to conceal it:—*Held*, that there was evidence to go to the jury of a secret disposition of the dead body of the child, and a conviction for endeavouring to conceal the birth of the child, by secretly disposing of its dead body, was confirmed. *Reg. v. Brown*, 94

**CONVICTION**—*for second offence where former offence not ejusdem generis*]—In August, 1869, and after the passing of 32 & 33 Vict. c. 27, S., a beer-house keeper, was convicted for keeping her house open for the sale of beer on Sunday, before half-past twelve o'clock in the day time. On the 6th of October, 1869, she was convicted for refusing to admit a constable to her premises:—*Held*, that the justices had power, under

s. 17 of 32 & 33 Vict. c. 27, to treat this as a second offence, and under 4 & 5 Will. 4. c. 85. s. 7, to order that S. should be disqualified from selling beer, &c., by retail for the space of two years. *Ex parte Short*, 63

— See Habeas Corpus. Poison. Vaccination.

**CORRUPT PRACTICES PREVENTION ACTS.** See Perjury.

**COSTS**—Enforcing costs on appeal. See Debtor and creditor.

— upon order of reference by sessions. See Arbitration.

— on quashing conviction. See Public House.

**COUNTY BRIDGE.** See Bridge.

**DEBTOR AND CREDITOR**—*imprisonment for non-payment of costs on appeal to quarter sessions*]—Default in payment of costs ordered to be paid by respondent in an appeal to sessions against an affiliation order is a default in payment of a sum of money recoverable summarily before a justice of the peace within the exception of the Debtors' Act, 1869, and such defaulting respondent is not protected by the Act from imprisonment. *Reg. v. Pratt*, 73

**DEPOSITIONS**—Signature by justices. See Evidence.

**DISTRICT SURVEYOR**—Fees. See Metropolitan Building Act, 1855.

**EMBEZZLEMENT**—*prosecution by illegal society*]—A society in the nature of a friendly society, but having rules—(not enrolled or certified under the Friendly Societies Acts)—certain of which are in restraint of trade, and therefore void, is not an illegal society in the sense that it is disabled from prosecuting a servant for embezzlement. *Reg. v. Stainer*, 54

**EVIDENCE**—*deposition of person deceased, or so ill as to be unable to travel: signature of justice*]—By 11 & 12 Vict. c. 42. s. 17, the depositions of the witnesses produced on the examination before justices against a person charged with an indictable offence, "shall be read over to, and signed, respectively, by the witnesses," and "shall be signed also by the justice or justices taking the same;" and if, upon the trial of the person accused, it shall be proved that any person whose deposition shall have been taken as aforesaid is dead, or so ill as not to be able to travel, then, after proof of certain matters, "if such deposition purport to be signed by the justice or by or before whom the same purports to have been taken, it shall be lawful to read such deposition in evidence in such prosecution, unless it shall be proved that such deposition was not in fact signed by the justice purporting to sign the same." By the schedule (M) to the Act, the caption runs, "the examination of C. D. and E. F. taken, &c.;" and the conclusion is, "the above depositions of C. D. and E. F. were taken and (sworn) before me at — on the day and year first above mentioned." On the trial of a person committed by justices under the above section a deposition of a deceased witness

appeared to be the second of four depositions made at the same hearing, all of which were pinned together, each occupying more than one piece of paper. The justices had not signed either of the sheets on which the depositions were written, except the last, and that sheet did not contain any part of the deposition in question, but their signatures were appended at the end of the last deposition to a statement in the form copied from schedule M. "The above depositions (naming the several witnesses, and amongst them the deceased) were taken and sworn before us also."—*Held*, that such depositions were properly received in evidence, and that it is not necessary that the separate deposition of each witness should be signed by the justices, but that it is sufficient if the depositions are signed as a body by the justices, according to the conclusion of schedule M. to the Act. *Reg. v. Parker*, 60

**EVIDENCE (continued)**—*of ship being a British ship upon indictment for wounding with intent*—On the trial of an indictable offence, committed on board a British ship on the high seas, it is not necessary to prove the register of such ship under the Merchant Shipping Act, 1854, part 11, or that she belongs to a person qualified to be owner of a British ship according to the terms of that Act. And upon the trial of an indictment against a sailor for wounding the mate on board a ship on the high seas, the master of the ship, the boatswain, and one of the crew, having stated the ship was a British ship, and was sailing under the British flag, it was held, the ship was sufficiently proved to be a British ship. *Reg. v. Von Seberg*, 133

— of previous conviction under Habitual Criminals Act. See Receiving Stolen Goods.

**Excise**—*service of notice of appeal; and of notice of hearing*—Service in Court of notice of appeal against an adjudication under the Excise Act (7 & 8 Geo. 4. c. 53) upon the clerk to the justices in their presence is a good service on the justices themselves. *Reg. v. Eaves*, 70

Service of the notice of the time for hearing the appeal on a clerk in the office of excise is not a good service under 4 Vict. c. 20. s. 30, that section requiring service to be made on the person laying the information. *Ibid.*

**Excisable Liquors.** See Billiards.

**FACTORY**—*slate quarry: meaning of term "premises"*—A slate quarry occupying with its accessories a large tract of land, uninclosed and approachable by no definite road or entrance, and furnished with covered sheds to which the rough blocks of material when raised are conveyed and there converted by a manufacturing process into slates, flags and other saleable articles, is not within the meaning of the term "premises" in the 30 & 31 Vict. c. 103. s. 3. sub-section 7. *Kent v. Astley*, 3

**FALSE PRETENCES**—*obtaining the use of a horse*—By 24 & 25 Vict. c. 96. s. 88, whoever shall by any false pretence obtain from any other person

any chattel, &c., with intent to defraud, shall be guilty of misdemeanour. To constitute an obtaining of a chattel, &c., within this section, there must, as in larceny, be an intention to deprive the owner wholly of his property; and merely to obtain the loan of a chattel by false pretences with intent, &c., is not within the section. *Reg. v. Kilham*, 109

The prisoner, by false pretences, obtained from a livery stable keeper a horse on hire for a third person, rode it himself during the time of hiring, and returned it to the stables afterwards:—*Held*, that a conviction for obtaining the horse by false pretences with intent, &c., was bad, and must be quashed. *Ibid.*

**FORGERY**—*antedating one's own deed*—A, by deed bearing date on the 7th of May, 1868, conveyed on that day certain lands to B in fee. Subsequently, on the 26th of April, 1869, C produced a deed, bearing date the 12th of March, 1868, purporting to be a demise of the same land for a long term of years, as from the 25th of March, 1868, from A to C. It was found by the jury that the alleged lease was executed after A's conveyance to B, and ante-dated for the purpose of defrauding B:—*Held*, that A and C were guilty of forgery. *Reg. v. Ritson*, 10

— *acquittance or receipt for money: clearance ticket: friendly society*—A friendly society had branches in various towns. A member belonging to one branch could not be received into the court of another branch as a clearance member without a writing called a "clearance," certifying that he had paid all the dues and demands of the branch to which he belonged, and authorising the other branch to receive him:—*Held*, that such "clearance" was not an acquittance or receipt for money within section 23 of 24 & 25 Vict. c. 98; and a conviction for forging such document was quashed. *Reg. v. French*, 68

— *warrant, authority, or request, for the payment of money: building society: receipt of depositor*—A building society was in the habit of taking money on deposit at interest, and upon repaying such deposit required a receipt to be given by the depositor for the amount repaid. The prisoner was convicted of forging one of such receipts, which was in the following form:—"Received of the South Lancashire Building Society the sum of 417l. 13s. on account of my share, No. 8071, pp. Sussey Ambler, William Kay." Sussey Ambler was the depositor, and the prisoner a local agent of the society. By the custom of the society such a document was treated as an authority, warrant, or request to pay the deposit, but not as an order:—*Held*, that the above document might be described in the indictment as a warrant, authority, or request for the payment of money by procuration within the 24 & 25 Vict. c. 98. s. 24. *Reg. v. Kay*, 118

**FRIENDLY SOCIETY**—when an illegal society and incapable of prosecuting. See Embezzlement.

— See Forgery.

**GAME—taking on Sunday: snare: “engine or instrument”**—The 1 & 2 Will. 4. c. 32. s. 3, provides that “if any person whatsoever shall kill or take game, or use any dog, gun, net, or other engine or instrument for the purpose of killing or taking any game on a Sunday or Christmas Day, such person shall, on conviction thereof, forfeit and pay for every such offence such sum of money, not exceeding 5*l.*, as to the said justices shall seem meet.” The appellant on Friday and Saturday, the 13th and 14th of August, was setting snares made of wire upon land over which, by consent of the owner and occupier, he had the right of sporting. Upon the following Sunday the snares were still set, and on that day two dead grouse were found caught in two of them. The appellant had a proper excise license to kill game:—*Held*, first, that a snare is an “engine” or “instrument” within the section; and, second, that although the appellant was not upon the land on the Sunday, he was liable to be convicted for using the snares on that day for the purpose of taking game. *Allen v. Thompson*, 102

**HABEAS CORPUS—amendment of commitment**—Where a prisoner is brought up under a writ of habeas corpus, and the commitment is insufficient, and the conviction has not been brought before the Court by *certiorari*, the Court is not justified in looking at the conviction for the purpose of amending the commitment by it, nor in detaining the prisoner in custody until the conviction is brought up by *certiorari*. *Ex parte Tinson*, 129

**HABITUAL CRIMINALS ACT**—onus of proof of previous conviction. See Receiving Stolen Goods.

**HIGHWAY—right of ploughing up surface of footpath: limited dedication**—The appellant was convicted under 5 & 6 Wm. 4. c. 50. s. 72, for destroying and injuring the surface of a highway, by ploughing it up. It appeared that a footway ran through a field of which the defendant was occupier. There was no evidence of the existence of this footpath before living memory, and no evidence of any limited dedication of the way to the public. It was proved, however, that within living memory it had been used as a footway by the public, and that the appellant and the previous occupier had, during all this time, ploughed it up in the manner now complained of:—*Held*, that the conviction was wrong, for the proper inference from the facts was, that the exercise of the right of ploughing up the path had been coeval with the user of the way by the public. The way must therefore be considered as having been dedicated and accepted by the public, subject to the inconvenience of being occasionally ploughed up, and that there was no legal objection to such a limited dedication of a way. *Mercer v. Woodgate*, 21

—order of sessions that highway shall cease to be a highway which the parish is liable to repair: appeal under 27 & 28 Vict. c. 101. s. 21: *like* NEW SERIES, 39.—MAG. CAS.

*proceedings*” under 5 & 6 Will. 4. c. 58]—By 27 & 28 Vict. c. 101. s. 21, when any highway board consider any highway unnecessary for public use, they may direct the district surveyor to apply to two justices to view the same, and thereupon the like proceedings shall be had as when application is made under the Highway Act, 1835, “to procure the stopping up of any highway, save only,” &c. And by section 2, that Act is to be construed as one with the Highway Act, 1862, which by section 42 of that Act is to be construed as one with 5 & 6 Will. 4. c. 50. By 5 & 6 Will. 4. c. 50. s. 85, the proceedings for stopping up and diverting a highway are provided for, and by section 88 an appeal to Quarter Sessions is given to any person injured or aggrieved by an order to stop up any unnecessary highway under that Act:—*Held*, that an appeal to Quarter Sessions lay under 27 & 28 Vict. c. 101. s. 21, against the making of an order of sessions directing that a highway should cease to be a highway which the parish is liable to repair. *Reg. v. Justices of Surrey*, 49

— notices preliminary to order for stopping up highway: *certiorari*: person aggrieved]—By 5 & 6 Will. 4. c. 50. s. 84, justices are empowered to view highways which it is proposed to divert or stop up, and to certify that they are unnecessary, upon proof that a notice in a prescribed form has been affixed at the place and by the side of each end of the highway from which the same is proposed to be diverted or stopped up. By 27 & 28 Vict. c. 101. s. 21, the proceedings under the former Act may be adopted for the purpose of certifying that a highway is unnecessary for public use. Three roads, each in a separate parish, formed one system, and consisted of three limbs, running from three turnpike roads at the points A, B, and C, and meeting at a central point D, so as to form a figure like that of the capital letter Y. The justices, purporting to act under 27 & 28 Vict. c. 101. s. 21, made three certificates as to each of the three highways. The roads referred to in the certificates were described, one as running from D to A, another as running from D to B, and a third as running from D to C. The certificates also recited that the requisite notices had been given. It appeared that a notice was placed at the points A, B, and C, but not at the central point D. The certificates having been affirmed on appeal to sessions, —*Held*, that a *certiorari* must issue for the purpose of quashing the orders of sessions, as each of the three orders related to a separate highway, one end of which was at D, so that the prescribed notices had not been given, and the certificate was invalid. *Reg. v. The Justices of Surrey*, 145

The applicant for the *certiorari* resided in the neighbourhood of the highways to which the certificates related:—*Held*, that, by reason of his residence, he was in the condition of a person aggrieved, and entitled to the *certiorari* as of right. *Ibid.*

Y

— See Bridge.

IMPRISONMENT FOR DEBT—Non-payment of costs on appeal. See Debtor and Creditor.

INDICTMENT—*form of: surplusage: false declaration*—An indictment charged the prisoner with the offence of making a false declaration before a justice, that he had lost a pawnbroker's ticket, "whereas in truth and in fact he had not lost the said ticket, but had sold, lent, or deposited it, as a security to one S. C., &c."—*Held*, that the allegation "but had sold, lent, or deposited it, &c.," did not render the indictment ambiguous or uncertain, but was pure surplusage, which might be rejected and need not be proved. *The Queen v. Richards* overruled. *Reg. v. Parker*, 60

— *aiding and abetting a felon: aiding in attempt to rape*—An indictment against H. and W. charged H. with rape, and W. with aiding and abetting the said rape. They were found not guilty of those charges, but the jury found H. guilty of attempting to commit the rape charged, and W. of aiding and abetting H. in the attempt.—*Held*, that W. was rightly convicted of misdemeanour. *Reg. v. Wyatt*, 83

— *abusing girl between ages of ten and twelve: verdict of common assault*—The indictment contained one count, and charged that the prisoner in and upon a girl between the ages of ten and twelve "unlawfully did make an assault and her did then unlawfully and carnally know and abuse against the form," &c. The offence of carnally knowing and abusing was disproved, but there was evidence of an indecent assault, which was left to the jury, who found the prisoner guilty of a common assault.—*Held*, that the indictment charged an assault as a distinct and separable offence, and that the conviction was good. *Reg. v. Guthrie*, 95

— Surplusage. See Perjury.

IRISH POOR—*desertion by husband: removal of wife and children*—The wife and unemancipated children of an Irishman, all born in Ireland, becoming chargeable to an English parish by reason of the desertion of the husband, cannot, in his absence, be removed to the Irish settlement of the wife under the 8 & 9 Vict. c. 117. s. 2. That section makes no provision for such a case, but contemplates their removal to the husband's place of settlement only, as members of his family, and with him. *Poor-Law Commissioners for Ireland v. Select Vestry of Liverpool*, 25

IRREMOVABILITY. See Irish Poor. Order of Removal. Pauper Lunatic.

JURISDICTION OF JUSTICES—*title to land in question: excess*—The power given to justices by 24 & 25 Vict. c. 100. s. 42, of summarily hearing and determining charges of assault and battery is by s. 46 ousted in any case where a question as to the title to land arises, and they cannot in such a case convict the defendant for using more violence than was necessary. *Reg. v. Pearson*, 76

LARCENY—*taking: mock auction: influence of threat*—Prosecutrix entered a sale-room, where a mock auction was being held. Prisoner was auctioneer, and knocked down a piece of cloth to prosecutrix for twenty-six shillings, for which she had not bid, as he knew. Prosecutrix denied that she had bid; prisoner asserted that she had, and must pay for it before she could leave. Prosecutrix tried to go out of the room, when a confederate standing between her and the door also said that she had bid, and prevented her leaving. She then in fear paid the money, and took away the cloth which was given to her.—*Held*, that these facts constituted a larceny, as they sufficiently shewed that the money was obtained from the prosecutrix against her will. *Reg. v. Macgrath*, 7

LICENSE. See Ale and Beer House. Billiards.

LOCAL BOARD. See Public Health Act.

LOCAL GOVERNMENT ACT—*general district rate: railway not constructed under parliamentary powers not rateable upon reduced scale*—Under the Local Government Act, 1858 (21 & 22 Vict. c. 98), s. 55, which enacts that the occupier of land used only as a railway constructed under the powers of any Act of Parliament for public conveyance shall be assessed in respect of the same in the proportion of one-fourth part only of such net annual value thereof, a line of railway which though actually worked and used under the provisions of different Acts of Parliament, was originally constructed by private agreement, without any parliamentary powers, is not rateable upon the reduced scale, but upon the full annual value. *The North-Eastern Rail. Co. v. The Local Board of Leadgate*, 65

MAINTENANCE. See Order of Maintenance. Pauper Lunatic.

MERCHANT SHIPPING ACT—Proof of ship being a British ship. See Evidence.

METROPOLITAN BUILDING ACT, 1855—*fees due to district surveyor*—The fees due under the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), s. 51, to a district surveyor, one month after the roof of any building surveyed by him in pursuance of the Act shall have been covered in, are payable by whomsoever at that time answers the description of "builder, occupier, or owner," and cannot be charged upon a person subsequently becoming the owner of the premises. *Tubb v. Good*, 135

MISDEMEANOUR—Conviction for, on indictment for perjury. See Perjury.

NOTICE OF APPEAL—service of upon clerk to the justices. See Excise.

NUISANCE—*information by inhabitant under 23 & 24 Vict. c. 77. s. 13: summons without previous notice to abate nuisance*—Under 23 & 24 Vict. c. 77. s. 13 (amended by 29 & 30 Vict. c. 90, part 2), a justice of the peace upon the complaint of any inhabitant of any parish or place of the existence of any nuisance on any private premises

in the same parish or place, may issue a summons requiring the person by whose act, default, permission, or sufferance, the nuisance arises, &c., or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before justices, &c., without proof of the service of a previous notice to abate the nuisance. *Cocker v. Cardwell*, 28

**ORDER OF MAINTENANCE—wife chargeable to union without her husband: wife leaving husband through his misconduct: offer of husband to receive his wife back**—By the Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 33, when a married woman requires relief without her husband, the guardians of the union or parish, or the overseers of the parish, as the case may be, to which she becomes chargeable, may apply to the justices having jurisdiction in such union or parish in petty sessions assembled, and thereupon such justices may summon such husband to appear before them, to shew cause why an order should not be made upon him to maintain his wife; and upon his appearance, or in the event of his not appearing, upon proof of due service of such summons upon him, such justices may, after hearing such wife upon oath, or receiving such other evidence as they may deem sufficient, make an order upon him to pay such sum, weekly or otherwise, towards the cost of the relief of the wife, as after consideration of all the circumstances of the case shall appear to them to be proper, &c. A husband having been summoned before justices under this section, it appeared that his wife had, about sixteen years previously, left his house, owing to his ill-usage, and had ever since lived separate from him. At the hearing of the summons she was still suffering from injury which she had received from him before their separation. He now offered to receive back his wife and promised not to ill use her, but she refused to go back, and there was medical evidence to shew that it would be dangerous for her to return to cohabitation:—*Held*, that the justices had jurisdiction, notwithstanding the husband's offer, to make an order, under the above section, upon him for the maintenance of his wife. *Thomas v. Alsop*, 43

**ORDER OF REMOVAL—wife's status of irremovability during husband's absence: husband a foreigner without a settlement**—A woman, after residing for more than a year in the same parish, married an American sailor who had no settlement in England, and lived with him in the parish for a few days. He then left her and went to sea, and during his absence an order was made for her removal from the parish to her maiden settlement. After the making of this order the husband returned:—*Held*, that the order must be quashed, as the cardinal principle of the Acts relating to irremovability appeared to be, that where there was no question of the separation of husband and wife, the hardship of removal should, if possible, be avoided, so that the wife having once acquired a status of irremovability,

did not lose it by her marriage with one who had no settlement. *Reg. v. The Inhabitants of St. George-in-the-East*, 90

— **irremovability: wife deserted by husband: unemancipated child**—On December 12, 1867, an order was made for the removal of Lucy L. and her daughter Lucy from the respondent parish to the appellant union. For more than one year next before the application for the order, Lucy L. and her daughter had resided together in the respondent parish; the daughter being eighteen years of age, and unemancipated at the date of the order. About thirteen years before that date Lucy L. and her husband were living, together with their children, in the parish of M. They quarrelled in consequence of his intimacy with another woman, and she, having attempted to stab him, was bound over to keep the peace towards him. He took other lodgings for himself, where he lived with the other woman. In consequence of his wife becoming chargeable, the parish officers of M. threatened him with legal proceedings if he did not maintain her. He agreed to allow her a weekly sum of money, and this he paid up to the date of the application for the order of removal. She remained in the lodgings which the family had occupied before the separation till she removed into the respondent parish, and there resided, as above mentioned, with her daughter. Their place of settlement was in the appellant union:—*Held*, that Lucy L. was irremovable, inasmuch as she had been deserted by her husband within the meaning of the 3rd section of 24 & 25 Vict. c. 56, amended by 29 & 30 Vict. c. 113. s. 17; but that the daughter, being unemancipated and above the age of sixteen years, was removable. *Reg. v. The Inhabitants of St. Mary, Islington*, 137

— **irremovability: break of residence**—The pauper, a bastard, was born in the appellant union, where his mother afterwards married, the pauper living with and being maintained by her and his stepfather there until their subsequent removal to the respondent union in June, 1861, where they have since resided, and whither he removed with them. In 1862, being then upwards of fifteen years of age, the pauper was elected and admitted a pupil in the "School for the Indigent Blind," in St. George's Fields, Southwark, the said school being a charitable institution supported by voluntary subscriptions, out of the funds of which the pupils are gratuitously clothed, maintained, and educated. On the 19th of June, 1868, being then upwards of twenty-one years of age, he was discharged in accordance with the regulations of the school, and returned to his mother and stepfather, by whom he was maintained and lodged as before, until March, 1869, when he became chargeable to the respondent union. An order having been obtained for his removal to the appellant union, —*Held*, that he had acquired the status of irremovability, and therefore could not be removed. *Reg. v. Guardians of the Abingdon Union*, 153

— Irremovability. See Irish Poor. Pauper Lunatic.

**PARTNERS**—Receiving partnership goods stolen by partner. See Receiving Stolen Goods.

**PAUPER LUNATIC**—*order of maintenance: irremovability: removal of lunatic by parents: break in residence*—A domestic servant, who had acquired the status of irremovability by residence in the R. Union, was seized with madness and was removed by her relations from her master's house to the residence of her parents in a different union. Her wages were paid in full and her master had no intention of receiving her back in his house. After staying with her parents for a single night, she was sent to the workhouse of the second union, and seven days afterwards taken to the County Lunatic Asylum:—*Held*, that the removal of the lunatic under these circumstances, without any exercise of will on her part, did not constitute a break in her residence, so as to deprive her of her status of irremovability, and that the order for her maintenance under 16 & 17 Vict. c. 97. ss. 97, 102, must be made on the R. Union and not on the union in which was the place of her settlement. *See* *per* Hannen, J., that while the incapacity of the lunatic continued, no change in her residence could take place so as to affect her status of irremovability. *Reg. v. Whitby Union*, 97

**PERJURY**—*false affidavit under Bills of Sale Act: misdemeanour: indictment: surplage*—Prisoner was indicted for wilful and corrupt perjury in making a false affidavit before a Commissioner for taking oaths in the Court of Queen's Bench, for the purpose of getting a bill of sale filed under the Bills of Sale Act, 1854:—*Held*, a misdemeanour though not wilful and corrupt perjury. *Reg. v. Hodgkiss*, 14

*Held also*, that the conclusion of the indictment for perjury, "that so the defendant did commit wilful and corrupt perjury" might be rejected as surplage, and therefore that a conviction for the misdemeanour was right upon such an indictment. *Ibid*.

— *evidence: Corrupt Practices Prevention Acts: protection of witness*—By 26 Vict. c. 29. s. 7, no person called before Commissioners of inquiry under the Corrupt Practices Prevention Acts shall be excused from answering any question relative to any corrupt practices at the election under inquiry on the ground that the answer may tend to criminate himself; and if any information, &c., should be at any time thereafter pending in any Court against such witness for any offence under the Corrupt Practices Prevention Acts, committed by him previously to the time of giving his evidence, the Court should, on production of a certificate given to him by the Commissioners, stay the proceedings in such information, &c., and may award the witness his costs. "Provided that no statement made by any person, in answer to any question put by or before such election committee or Commissioners, shall, except in cases of indictments for perjury, be ad-

missible in evidence in any proceeding, criminal or civil." A witness before such Commissioners of inquiry was, after giving his evidence before it, indicted for perjury committed before a Judge, on the trial of an election petition in respect of the same election with reference to which he was examined before the Commissioners. Statements made by such witness, in answer to questions put by the Commissioners relative to corrupt practices at such election, were given in evidence against him to prove the indictment for perjury:—*Held*, that the exception in the proviso to 26 Vict. c. 29. s. 7, as to cases of indictments for perjury, must be considered to mean perjury committed in answers to questions put by the Commissioners on the inquiry, and not to perjury generally, and therefore that the above evidence was not admissible. *Reg. v. Buttle*, 115

**PLEADING**. See Indictment.

**POISON**—*sale of to person unknown: medicine: bona fides*—Under the Pharmacy Act, 1868, 31 & 32 Vict. c. 121. s. 17, a chemist who *bona fide* believes he is dispensing a prescription given by a medical man to a person named at the foot of the prescription cannot be convicted for selling poison to a person unknown to him, but must be taken to have dispensed a medicine according to the proviso to s. 17. *Berry v. Henderson*, 77

A chemist cannot be convicted of selling poison to a person unknown, and also for selling poison in a bottle not labelled "poison" in respect of the same sale. *Ibid*.

**POOR**. See Irish Poor. Order of Removal. Pauper Lunatic.

**POOR RATE**—*occupation of port, harbour, and tidal river piers*—By an Act of Parliament certain Commissioners were authorised and required to deepen and cleanse the channel of a harbour, and to make an artificial entrance with piers, by which ships might pass from the sea into the harbour. Tolls were to be paid in respect of such vessels as entered the harbour, but were not to be received to the full amount authorised by the Act until the whole works were completed. The piers were erected, and the channel deepened and cleansed, and the Commissioners received tolls in respect of the vessels which entered the harbour. There was nothing in the Act to shew that they were to be considered as purchasers or owners of the land upon which the works were to be done:—*Held*, first, as to the channel, that the Commissioners had simply a power to make a right of passage from the sea to the harbour, and that they were not rateable to the poor rates in respect of such right of passage; secondly, that, although they were occupiers of the land upon which the piers stood, yet that the occupation could not be taken to be enhanced in value by the revenue derived from the tolls, inasmuch as an occupier of the piers would get no part of the tolls, or derive any benefit from the harbour, and therefore that the appellants were not liable

to be rated to the poor rates, the piers themselves being worth nothing. *The Commissioners for Improving the Harbour of New Shoreham v. The Churchwardens and Overseers of Lancing*, 121

**PRACTICE**—*procedure on trial for knowingly having counterfeit coin in possession after previous conviction for uttering*—Upon the trial of an indictment for the felony of having committed a misdemeanour within either of sections 9, 10, or 11 of 24 & 25 Vict. c. 99 relating to the unlawful possession and uttering of counterfeit coin after a previous conviction for a misdemeanour within those sections, the prisoner must be arraigned upon the subsequent offence, and evidence respecting the subsequent offence must first be submitted to the jury, and the previous conviction must not be inquired into until after the verdict on the charge of the subsequent offence. *Reg. v. Martin*, 31

— under the Habitual Criminals Act. See *Receiving Stolen Goods*.

**PRISON**—*liability of borough to expenses of enlarging county gaol: repairs, alterations, additions, and improvements in or to prison*—By 5 & 6 Vict. c. 98, s. 18, a borough with a separate Court of Sessions, sending its prisoners to the county gaol without any special contract, shall pay the expense incurred in the conveyance, transport, maintenance, safe custody and care of every such prisoner, according to the time he shall remain in custody there, at the average daily cost of each prisoner according to the whole number of prisoners confined in the prison, including in such expenses all expenses of "repairs, alterations, additions, and improvements in or to the prison":—*Held*, that any such borough is bound to contribute, in the proportion above mentioned, not only towards the cost of the necessary and ordinary repairs of the county gaol, but towards the cost of enlarging it, according to the provisions of the Prison Act, 1865 (28 & 29 Vict. c. 126). *Reg. v. The Mayor, &c., of Wigan*, 68

**PUBLIC HEALTH ACT**—*notice to pave streets not being highways*—A notice by a local board of health to the owner of houses abutting upon a street not being a highway, to sewer, level, pave, flag and channel the same, in pursuance of the Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 69, is not invalid by reason of the plans and sections of the required works deposited under the 24 & 25 Vict. c. 61, s. 16, including narrow strips of land in front of the houses, not open to or used by the public. *Hall v. Potter*, 1

**PUBLIC HOUSE**—*opening on Sunday during prohibited hours: costs*—A was charged before justices, under 11 & 12 Vict. c. 49, with having opened his house for the sale of wine and beer on Sunday, before half-past twelve. He kept a refreshment room communicating with a railway station; he had a notice thereon as to the

penalties incurred in case of persons not travellers having refreshment during prohibited hours; he had ordered his servants to ask persons if they were going by train; eight persons were in the room within the prohibited time; he had questioned six of them, but his servant neglected to question two who came in during A's absence; of the eight persons, four were strangers who went off by train which started shortly after their entering the room; the others resided about a quarter or half-mile off, and three of them took tickets and went by the train, whilst the fourth had accompanied his son, who went by it. The justices convicted A:—*Held*, that the conviction was wrong. *Copley v. Burton*, 141

The Court in future will, on quashing a conviction of this kind, do so with costs. *Ibid*.

**RAILWAY**—*obstructing by altering signals*—The prisoner in the night time altered the position of two arms of a semaphore signal on a railway station, so as to change the signal from "all clear" to "danger" and "caution" respectively, and also altered the colour of two distant signals from white to red, thereby changing the signal from "clear" to "danger." The driver of a goods train, which under ordinary circumstances would have passed through the station without slackening speed, in consequence of the state of the signals shut off steam and approached the station so cautiously that he could at any moment have come to a standstill. The mail train following the goods train on the same line of rails, was due at the station half an hour after the goods train so passed through the station:—*Held* (Martin, B., *dissentiente*), that the prisoner had caused the engine and train to be obstructed within the meaning of section 36 of 24 & 25 Vict. c. 97. *Reg. v. Hadfield*, 131

— when not rateable on reduced scale. See *Local Government Act*.

**RATE**. See *Local Government Act*. **Poor Rate**.

**RECEIPT**—for money. See *Forgery*.

**RECEIVING STOLEN GOODS**—*receiving partnership goods stolen by partner*—The statute 31 & 32 Vict. c. 116, s. 1, by which a partner or joint owner in goods is rendered liable to be convicted of stealing goods, in respect of which he is so jointly interested, does not render the receiver of such goods, knowing the same to have been stolen by such partner, liable to be convicted as such receiver under the 24 & 25 Vict. c. 96, s. 91. *Reg. v. Smith*, 112

A and B were in partnership, and B, in fraud of the partnership, disposed of the goods of the firm to the prisoner, who knowingly received the same. The prisoner was indicted and convicted under the 24 & 25 Vict. c. 96, s. 91:—*Held*, that the conviction could not be supported. *Ibid*.

*Seem*, that the prisoner might have been indicted and convicted as an accessory to or after the felony, either at common law or under 24 & 25 Vict. c. 94, ss. 1, 3. *Ibid*.

**RECEIVING STOLEN GOODS** (*continued*)—*evidence: previous conviction: onus of proof: notice: Habitual Criminals Act, 1869*—By the Habitual Criminals Act, 1869 (32 & 33 Vict. c. 99), s. 11, where any person who has been previously convicted of any offence specified in the first schedule hereto, and involving fraud or dishonesty, is found in the possession of stolen goods, evidence of such previous conviction shall be admissible as evidence of his knowledge that such goods have been stolen; and in any proceedings that may be taken against him as receiver of stolen goods, or, &c., proof may be given of his previous conviction before evidence is given of his having been found in possession of such stolen goods: provided that not less than seven days' notice shall be given to such person that proof is intended to be given of his previous conviction, and that he will be deemed to have known such goods to have been stolen until he has proved the contrary. On the trial of a receiver of stolen goods, a notice was proved to have been duly given him in the above form, and a previous conviction for larceny was proved against him, and such evidence was relied on as proof of guilty knowledge. The prisoner offered no evidence to rebut such evidence of guilty knowledge:—*Held*, that in the absence of any enactment in the statute, that he should be deemed to have known such goods to have been stolen until he proved the contrary, the notice could not have the effect it purported to have, and that such receiver was not called upon to prove that he had not such guilty knowledge. *Reg. v. Davis*, 135

**ROGUE AND VAGABOND**—*frequenting street or highway with intent to commit felony*—By 5 Geo. 4. c. 83, s. 4, a suspected person or reputed thief, frequenting any river, canal or navigable stream, dock or basin, or any quay, wharf or warehouse near or adjoining thereto, or any street, highway or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, highway or place adjacent, with intent to commit felony, shall be deemed a rogue and vagabond, and may be convicted:—*Held*, that this does not apply to all streets and highways, but only to streets and highways leading or adjacent to places of the character mentioned in the Act. *Ex parte Tinson*, 129

*Ex parte Brown* dissented from; *Ex parte Jones* approved. *Ibid*.

*Semble*, a street may, in some cases, be itself a place of public resort within the meaning of the Act. *Ibid*.

**SETTLEMENT**—*public tax or levy under 3 Will. & M. c. 11. s. 6: improvement rate and lamp rate*—Under an Improvement Act for the city of E., authority was given to levy certain improvement and lamp rates. Commissioners were appointed under the Act, who were empowered to rate and assess, by a just and equitable ground rate, the several landowners and owners, and the several tenants and occupiers of all houses, &c., within the city. Power was given to the commissioners

to appoint two or more inhabitants of the city or of each parish, &c., within it, to be assessors of the rates, and they were required to make such rates, and to deliver copies thereof to the commissioners who were to settle and sign the same. The churchwardens and overseers of the poor of the respective parishes were to be the collectors of the rates. T. rented a dwelling-house in the parish of S. within the city, and paid his share towards the improvement rate and the lamp rate made under the powers given by the Act:—*Held*, that these rates were public taxes or levies of the parish within the meaning of statute 3 Will. & M. c. 11. s. 6, and that T. gained a settlement in the parish of S. *Reg. v. The Guardians of the Poor of the St. Thomas' Union*, 83

**TRADES UNION.** See Embezzlement.

**TURNPIKE ROAD**—*repair: insufficiency of trust funds: contribution from highway rates: apportionment*—By a special Turnpike Roads Act, the trustees were authorised to expend the sum of 850*l.* upon the repair of the thirty-five miles of road within their trust. This sum was insufficient for the repairs, and they applied to justices to make an order upon the surveyors of highways for the parish of P., through which a portion of the road passed, for the payment of a sum of money towards the repairs of such road. They required an order for the payment of 115*l.* 8*s.* 6*d.*, which sum they arrived at by apportioning the 850*l.* according to a mileage proportion, which would give 27*l.* 4*s.* 8*d.* to P., and then deducting that sum from 142*l.* 13*s.* 2*d.*, the estimated amount necessary for the repair of the road in P. The cost of repairing the road in P. was higher than the cost in other parishes, owing to the traffic being much heavier, and if the apportionment had been made after taking into consideration such additional cost, the sum apportioned to P. would have been 89*l.*:—*Held*, that the mode of calculation adopted by the trustees was wrong, and that the justices were right in ordering the payment of 53*l.* 13*s.* 2*d.*, the difference between the above sum of 89*l.* and the estimated cost of the repairs for the year in P. *Trustees of the Brighton Turnpike Trust v. Surveyors of Highways of Preston*, 33

**TURNPIKE TOLL**—*manure carried by dealer: exemption*—Under 5 & 6 Will. 4. c. 18. s. 1, which provides that no turnpike toll shall be demanded in respect of any horse or carriage conveying manure for land, artificial manure carried by the dealer to the farmer in the dealer's cart is exempt from toll. *Foster v. Tucker*, 72

—*liability to toll for leaving a carriage upon the road*—The 41st section of 3 Geo. 4. c. 126, imposes a penalty on any person who, *inter alia*, "shall leave upon a turnpike road any horse, cattle, beast, or carriage whatsoever, whereby the payment of all or any of the tolls shall or may be evaded:—*Held*, that to constitute the offence of leaving a carriage within that section the carriage must be left



waiting on the road. Where therefore a carriage was driven on a turnpike road to within a short distance of a toll gate, when the owner got out and walked through the gate, and the carriage, instead of waiting, was driven back to the owner's residence,—*Held*, that such owner could not for so acting be convicted under the 41st section of leaving the carriage on the road, whereby the payment of toll was evaded. *Stanley v. Mortlock*, 160

— *application of tolls*—By a Turnpike Act it was enacted that the trustees should apply the moneys arising from tolls, &c., in the first place in defraying the expenses of obtaining the Act, and “in the next place in paying and discharging all interest now due, and owing, and which shall hereafter become due and owing upon any mortgage, &c., of the tolls hereby granted, and in defraying the expenses of building toll-houses, &c.; and in defraying the expenses of altering, improving, repairing, &c., the said roads.” The trustees provided for interest accruing in respect of money borrowed upon security of the tolls, and arrears of interest, and no balance remained in their hands which was available for repairs. The road being out of repair, an order of justices under 5 & 6 Will. 4. c. 50. s. 94, was made upon the trustees to pay a sum for its repair to the surveyor of the Highway Board:—*Held* (distinguishing *The Queen v. Hutchinson*), that the order of the justices was wrong. *The Bruton Turnpike Trustees v. The Wincanton Highway Board*, 155

VACCINATION—*certificate of medical practitioner: omission to procure vaccination of child: second offence*—On the 30th of March, 1869, A. was convicted for disobeying an order of a justice to cause his child to be vaccinated within seven days from the date of such order. Subsequently the registrar of births and deaths gave him notice to procure the vaccination of his child, which he failed to do; and on the 29th of April another information came on to be heard against him, when he was ordered to have the child vaccinated within seven days from the date of such order. At the hearing he produced a certificate in the form given in schedule B to the Act 30 & 31 Vict. c. 84, and signed by a medical practitioner, certifying that the child was not in a fit state to be vaccinated, and postponing the vaccination until the 20th of June. He did not obey the order made upon him, and on the 13th of May, 1869, another information under 30 & 31 Vict. c. 84. s. 31, came on to be heard against

him for disobedience of such order. He again produced the certificate above mentioned, but he was convicted:—*Held*, first, that the justices were not deprived of the jurisdiction to convict him by reason of the former conviction; and secondly, that the certificate was not a bar to the proceeding, but that the justices had jurisdiction to consider whether it was given *bona fide* or not, and that if they thought it was not, they might consider that A. had shewn no reasonable ground for his omission to carry the order into effect. *Allen v. Worthy*, 36

WINE AND BEER-HOUSE—*alehouse: general annual licensing meeting: adjournment: certificate: res adjudicata*—B, who was the holder of a license granted to him under 3 & 4 Vict. c. 61, for the sale of beer in a beerhouse occupied by him, gave the proper notices required by 32 & 33 Vict. c. 27, of his intention to apply for a certificate to obtain a license for the sale of beer in the said house. He made his application at the General Annual Licensing Meeting, but the certificate was refused upon the ground that he came within the 3rd sub-section of the 8th section of 32 & 33 Vict. c. 27. The meeting was held upon the 20th of August, and was adjourned till the 17th of September. On the 25th of August, D gave notice that he should apply at the adjourned meeting for a certificate in respect of the same house which he alleged was occupied by him. The justices refused to entertain the application, as they had already refused the certificate on the application of B. Upon appeal to the quarter sessions, the appeal was dismissed without hearing it on the merits:—*Held*, upon a rule for a mandamus to enter continuances and hear the appeal, first, that the refusal to grant the certificate to B, upon a ground personal to him, did not prevent D from making an application for a certificate in respect of the same house; secondly, that the notices having been given by D 21 days before the adjourned meeting at which the application was made by him, the requirements of section 7 of 32 & 33 Vict. c. 27, were so far complied with, therefore, that the rule for a mandamus must be absolute. *Regina v. the Justices of the West Riding of Yorkshire*, 17

— Conviction, as for a second offence, for refusing to admit constable after conviction for keeping house open during prohibited hours on Sunday. See Conviction.

WOUNDING—with intent. See Evidence.

## TABLE OF CASES.

- 
- Allen v. Thompson, 102  
 — v. Worthy, 36  
 Berry v. Henderson, 77  
 Brighton Turnpike Trust v. Preston Highways, 33  
 Bruton Turnpike Trustees v. Wincanton Highway Board, 155  
 Cocker v. Cardwell, 28  
 Copley v. Burton, 141  
 Foster v. Tucker, 72  
 Hall v. Potter, 1  
 Jones v. Whitaker, 139  
 Kent v. Astley, 3  
 Mercer v. Woodgate, 21  
 New Shoreham Harbour Commissioners v. Lancing Overseers, 121  
 North Eastern Rail. Co. v. Leadgate L. B., 65  
 Poor Law Commissioners for Ireland v. Liverpool, Vestry of, 25  
 Preston v. Buckler, 105  
 Regina v. Abingdon Union, 153  
 — v. Brown (C.C.R.), 94  
 — v. Buttle (C.C.R.), 115  
 — v. Chart & Longbridge, upper half hundred of (C.C.R.), 107  
 — v. Davis (C.C.R.), 135  
 — v. Eaves, 70  
 — v. Falkingham (C.C.R.), 47  
 Regina v. French (C.C.R.), 58  
 — v. Guthrie (C.C.R.), 95  
 — v. Hadfield (C.C.R.), 131  
 — v. Hodgkiss (C.C.R.), 14  
 — v. Kay (C.C.R.), 118  
 — v. Kilham (C.C.R.), 109  
 — v. Martin (C.C.R.), 31  
 — v. M'Grath (C.C.R.), 7  
 — v. Parker (C.C.R.), 60  
 — v. Pearson, 76  
 — v. Pratt, 73  
 — v. Ritson (C.C.R.), 10  
 — v. St. George's-in-the-East (inhabitants), 90  
 — v. St. Mary, Islington, 137  
 — v. St. Thomas, Devon, Guardians of, 83  
 — v. Smith (C.C.R.), 112  
 — v. Stainer (C.C.R.), 54  
 — v. Surrey, Justices of, 49, 145  
 — v. Von Seberg (C.C.R.), 133  
 — v. West Riding, Justices of, 17  
 — v. Whitby Union, 97  
 — v. Wigan, &c., Mayor of, 68  
 — v. Wyatt (C.C.R.), 83  
 Short, *ex parte*, 63  
 Stanley v. Mortlock, 150  
 Thomas v. Alsop, 43  
 Tinson, *ex parte*, 129  
 Tubb v. Good, 135  
 West London Exten. Rail. Co. v. Fulham Union Assess. Com. (Q.B. 178), 149

PRINTED BY SPOTTISWOODE &amp; CO.,

New-street Square; 29 Chancery Lane; 30 Parliament Street; and 38 Royal Exchange.

THE  
**LAW JOURNAL REPORTS**

FOR  
THE YEAR 1870:

CASES  
IN THE COURT OF  
**Probate,**  
IN THE COURT FOR  
**Divorce and Matrimonial Causes,**

REPORTED BY  
GEORGE HENRY COOPER, Esq. BARRISTER-AT-LAW,  
AND  
GEORGE CALLAGHAN, Esq. BARRISTER-AT-LAW;

AND ON APPEAL THEREFROM  
TO THE  
**House of Lords,**

REPORTED BY  
EDMUND STORY MASKELYNE, Esq. BARRISTER-AT-LAW.

---

MICHAELMAS TERM, 1869, TO MICHAELMAS TERM, 1870.

---

---

PROBATE AND MATRIMONIAL.  
NEW SERIES, VOL. XXXIX.

---

---

LONDON:  
PRINTED BY SPOTTISWOODE AND CO. NEW-STREET SQUARE.  
PUBLISHED BY EDWARD BRET INCE, 5, QUALITY COURT, CHANCERY LANE.

---

MDCCCLXX.



# CASES ARGUED AND DETERMINED

IN THE

## Court of Probate,

IN THE COURT FOR

## Divorce and Matrimonial Causes,

AND IN THE HOUSE OF LORDS ON APPEALS FROM THOSE COURTS.

COMMENCING WITH

MICHAELMAS TERM, 33 VICTORIÆ.

PROBATE. }  
1869. } BECKETT v HOWE AND  
Nov. 6, 16. } OTHERS.

*Will—Execution—Signature not seen by witnesses—Acknowledgment.*

*A asked B to witness his will. He subsequently asked C if he would sign a paper (not mentioning its character) for him, and said he should wish B to be also present at the same time. A few evenings afterwards they met by appointment. A produced a paper from his pocket and (alluding to the death of his wife) observed,—“They were aware that there had been a change in his circumstances which involved an alteration in his affairs.” He then so folded the paper that they could not see his signature or any other writing upon it, but they believed that they were signing his will:—Held, that the circumstances warranted the presumption that the signature of the testator was on the paper when the witnesses signed, and that there was a sufficient acknowledgment of it.*

The plaintiff, as the executor named therein, propounded the will, dated July, 1868, of Henry John Long, who died in March, 1869, and the defendants, the next of kin, contested its validity, on the ground that it was not executed according to the provisions of 1 Vict. c. 26.

The will, which was in the handwriting of the deceased, covered the three first  
NEW SERIES, 39.—PROB. AND M.

sides of a sheet of paper and a few lines on the top of the fourth side. Beneath was written: “Witness my hand—Henry John Long;” and then followed the attestation clause:—“In witness whereof we the undersigned have, at the request of the testator, in his presence, and in the presence of each other, severally subscribed our names.

Witness our hands } HENRY PRESTAGE.  
ISAAC OAKLEY.”

The cause was heard before Lord Penzance, on Saturday, November 6th. The evidence was as follows:—

Isaac Oakley.—I am an engineer, living at Bermondsey. I knew the testator. On the 12th July, 1868, as we were walking home together, he asked me if I would step across to Mr. Prestage’s to sign his will. I said I would. He said he would let me know the evening. A few days afterwards I went by appointment to Mr. Prestage’s. The testator took a paper from his pocket. I did not take particular notice of it. He unfolded it, and then again folded it in the way he wanted it to lie when we signed it. Before we signed, he said we were of course aware that the death of Mrs. Long had necessitated an alteration in his affairs. He then moved the paper towards Mr. Prestage and said, “Sign here.” He had covered up everything except the place where we were to sign. Mr. Prestage and I signed the

B

paper in his presence. He then took the paper and put it in his pocket, saying, he did not suppose we should hear any more of it.

Cross-examined.—I cannot say if the words, "witness our hands," were on the paper or not; I did not see them. I saw no writing whatever. I do not recollect the word "will" being used that evening at all.

Henry Prestage.—On a Tuesday evening in July, 1868, I was walking with the testator. He said, "I want you to sign a paper for me." He said further, "I should wish Mr. Oakley to be also present, and your house being near I shall ask him to meet us there." On the Thursday evening following he came to my house. When Mr. Oakley arrived, the testator said, "You are aware that there has been a change in my circumstances which involves an alteration in my affairs." I replied, "Yes, I am aware of it." I then saw him take a paper from his side pocket, and he kept moving it about or adjusting it for a minute or so. I saw there was writing on it. Having folded it he placed it before us and said, "Now, Mr. Prestage, you had better sign first." I accordingly signed the paper and then Mr. Oakley. The testator then refolded the paper and said, "I don't suppose you will hear anything more of this." When I signed my name I do not remember seeing any writing on the paper. I cannot say whether the words "witness our hands" were there or not; I am not certain. (As folded before the Court the words in question could have been seen on the paper.) The will and signature are in the handwriting of the testator.

Cross-examined.—The paper was so folded that I could not see any writing whatever, when I signed.

The witness was recalled, and in answer to questions put to him by the Court, said, he inferred from what the testator said about an alteration of his affairs that he was signing his will.

*Dr. Tristram*, for the plaintiff (on Nov. 6), submitted that all the circumstances warranted the presumption that the signature of the testator was on the paper at the time the witnesses signed, and that there

was a sufficient acknowledgment of it. He referred to *Gwillim v. Gwillim* (1).

*Dr. Spinks* (with him *Searle*), for the defendants, *contra*. The attestation clause is imperfect. It does not shew that the testator was aware that he should sign or acknowledge his signature in the presence of the witnesses. Before such an acknowledgment can be held sufficient it must be first shewn that the signature was on the will.

[LORD PENZANCE.—In *Gwillim v. Gwillim* (1) it was held that it is not necessary to have distinct evidence that the name was on the will when the witnesses signed.]

There the testator asked the witnesses to attest the will, and there was no attempt at concealment. Here there was an actual concealment which rebuts the presumption of acknowledgment.

[LORD PENZANCE.—But is it clear that the testator desired to conceal the signature?]

The witnesses would have learned nothing even if the part of the will which was written on the top of the page had been exposed to them. The folding of the paper therefore in the manner described shewed concealment.

*Owr. adv. vult.*

Judgment was given on November 16 as follows:—

LORD PENZANCE.—The Court took time in this case to consider the former decisions, with the view of seeing whether any cases had been decided which in any way qualified the doctrine that was pronounced by Sir Cresswell Cresswell, in *Gwillim v. Gwillim* (1). The question is, whether a will has been properly executed, and the facts are these: The testator said to one of the attesting witnesses, some few days before the date of the execution of the will, that he wished him to come on a particular day to witness his will, and to the other attesting witness he likewise said that he wished him to sign a paper, not mentioning what it was; and that he wished him to be present at the same time as the other attesting witness. In accordance with this arrangement, a meeting was fixed by the testator

1 Sw. & Tr. 200; s.c. 29 Law J. Rep. (n.s.) Prob. M. & A. 31.

for a particular evening. Both witnesses attended, and the testator produced the paper, which he carefully folded up, so that they could not see anything that was upon it, and having made the remark to them that, owing to the death of his wife, it was necessary to alter his affairs, he asked them to sign their names to it. The question is, is that a due execution? The witnesses did not see the signature of the testator on the paper, and he never said that it was there, but he did directly tell one of the witnesses of the character of the paper he was going to execute, and he told them both indirectly the same thing the evening they attended for the execution; for he gave them to understand that, owing to the death of his wife, he was about to make some new testamentary disposition. The doctrine of *Gwillim v. Gwillim* (1) is, that if a man produce a paper to witnesses, and give them to understand that it is his will, and get them to sign their names as witnesses, both being present at the same time, that is an acknowledgment of his signature, always supposing that the signature was there at the time. Whether that is right or wrong, the Court does not proceed to inquire. It is founded on two cases in the Privy Council, which were referred to by Sir Cresswell Cresswell in his judgment, and he arrived at this determination: that provided a man acknowledges the paper to be his will, and his signature is on it at the time, that is an acknowledgment of his signature. I think the facts in this case come up to that requirement. I think that what passed was tantamount to his saying that it was his will, and I think the signature was on the will at the time. It may be said, what evidence is there that the signature was there at all? If it were necessary to prove by any direct evidence that the signature was there, I might have some difficulty in holding that it was. But here again I refer to *Gwillim v. Gwillim* (1). There the learned Judge, from the whole appearance of the document and the circumstances of the case, was satisfied of the existence of the signature, and there was quite as much in this case to lead to the conclusion that the signature was on the paper at the time of execution as there was in the case of *Gwillim v. Gwillim* (1). "If it were

necessary," said Sir Cresswell Cresswell, "to have direct evidence that the name of the testator was on the will, when he acknowledged it by asking them to witness his will, the proof of the execution would fail; but that certainly is not necessary, for the contrary was decided in *Cooper v. Bockett*" (2). And then, after referring to the other case in the Privy Council, he continued: "I am therefore at liberty to judge, from the circumstances of this case, whether the name of the testator was on the will at the time of the attestation or not. It is hardly likely that this testator, who knew that there must be two witnesses to the will, did not also know that he must sign it before they did, and either sign it, or acknowledge it in their presence." Word for word the case here. It is hardly likely that the testator did not know that he should either sign or acknowledge his signature in the presence of the witnesses, for there is quite sufficient to shew that he knew what was the ordinary process of will-making. The learned Judge proceeded: "Then, if I look at the position of the words, I find at the top of the third page, 'My will and testament, 1856, March 31st;,' under that comes, 'Brange, March 31st, 1856,' that being the time and place at which the old ladies say they were asked to sign the will; under that comes, 'John Gwillim,' and then the word, 'witness,' a little below, on the left-hand side, where one would expect to find it. I cannot therefore but think that the name of the testator was written at that time, and that by asking those old ladies to witness his will, he did acknowledge his signature." I think that these remarks apply exactly to the present case, and must hold that the will was properly executed.

[*Dr. Spinks* asked that the defendants might be allowed their costs out of the estate, the inquiry having arisen from the acts of the testator.

LORD PENZANCE.—There were no merits in the case. I cannot allow the defendants' costs out of the estate.]

Proctors—Rothery & Co., for plaintiff;  
Attorneys—Ingle, Goody & Co., for defendants.

MATRIMONIAL. }  
 1869. }  
 Nov. 23. }

MILLER v. MILLER.

*Restitution; Husband's suit for—Unfounded charges in wife's answer—Wife possessed of separate income—Wife condemned in costs of suit—20 & 21 Vict. c. 85. s. 51.*

*The husband filed a petition for restitution of conjugal rights. The wife, in her answer, charged him with cruelty of a gross and indecent kind, but at the hearing her counsel admitted that he had no case. The wife had a separate income of 760l. per annum. She had induced her husband to give up his practice as a surgeon in the country, and had put him to expense by the unfounded charges in her answer:—The Court, under these circumstances, condemned her in the costs of the suit.*

This was originally a suit promoted by the husband for restitution of conjugal rights. The petition also alleged that the respondent was in receipt of an income of about 800l. per annum, settled to her separate use, and included a prayer that she might be ordered to pay out of her separate estate the costs of and incidental to the suit. The respondent, in her answer, alleged that the petitioner had been guilty of acts of violence towards her, and of other acts of cruelty of a gross and indecent kind, and prayed that the petition might be dismissed. At the hearing, which took place on the 14th of July, 1869, counsel for the respondent admitted that he had no case. The Court decreed restitution of conjugal rights, and reserved the question of costs. The respondent being abroad, it had not been possible to serve the decree upon her.

The matter now came before the Court, on the petitioner's application, that the respondent might be condemned in the costs of the suit.

From the affidavits filed in support of the application it appeared that in 1864 the petitioner, a surgeon, yielding to the wishes of his wife, who represented that her income (760l.) was more than adequate for their mutual requirements, disposed of his practice in the country and came to London; that on withdrawing from cohabitation in

1866 she took with her all such plate and other articles as had been her property before marriage, or that she had acquired afterwards, and that since that time he had derived no benefit whatever from her separate property; that by the charges of cruelty and indecency contained in her answer she had materially increased the costs of the suit; and that his present means of livelihood as a consulting surgeon were slender and precarious, and wholly insufficient to enable him to pay and discharge the said costs.

*Dr. Spinks* (with him *Dr. Tristram*), for the petitioner, submitted that the case was one in which the wife ought to be condemned in the costs of the suit. The fullest power was given to the Court in the matter of costs by the 51st section of the Divorce Act, and though there was no case directly in point which could be cited in support of the application, there were several in principle:—*Glennie v. Glennie and Bowles* (1), *Carstairs v. Carstairs and others* (2), *Robinson v. Robinson and Lane* (3), *Wells v. Wells and Cottam* (4). In *Milford v. Milford* (5), the wife's appeal to the House of Lords was dismissed with costs, and in *Morgan v. Morgan and Porter* (6), the wife was virtually condemned in the costs of a portion of her answer. In the Ecclesiastical Courts the wife was a privileged suitor, but the reason was that, as a general rule, she had no property of her own:—*Wilson v. Wilson* (7), *D'Aguilar v. D'Aguilar* (8). Where the reason of the rule has ceased to exist, the rule should also cease.

*Dr. Deane* (with him *E. Browning*), for the respondent.—The Divorce Act has been ten years in force, and if the Court had the power under the 51st section which is now contended for, it is reasonable to suppose that there would have

(1) 3 Sw. & Tr. 109; s. c. 32 Law J. Rep. (n.s.) Prob. M. & A. 17.

(2) 3 Sw. & Tr. 538; s. c. 33 Law J. Rep. (n.s.) Prob. M. & A. 170.

(3) 1 Sw. & Tr. 400; s. c. 29 Law J. Rep. (n.s.) Prob. M. & A. 178.

(4) 3 Sw. & Tr. 593; s. c. 33 Law J. Rep. (n.s.) Prob. M. & A. 72.

(5) 37 Law J. Rep. (n.s.) Prob. M. & A. 77.

(6) 38 Law J. Rep. (n.s.) Prob. M. & A. 41.

(7) 2 Consis. Rep. 203.

(8) 1 Hag. 773.



been cases decided adversely to the wife. *Milford v. Milford* (5) is the only case in point, but that was a vexatious appeal. *Morgan v. Morgan and Porter* (6) is consistent with *Glennie v. Glennie* (1), and in *Garston v. Garston* (not reported) the Court declined to condemn the wife in costs, though at the very time she was putting the husband to expense in a suit for nullity on the ground of impotence, which she afterwards abandoned, she was also preparing a suit for judicial separation on the ground of adultery.

*Dr. Spinks*, in reply.—There were merits in *Garston v. Garston*, and it was because of those merits that the Court declined to make the order.

LORD PENZANCE.—I had no recollection at first of what took place in *Garston v. Garston* on the subject of costs. I recollect now, when the case has been mentioned more fully, some of the circumstances of it, and I do not recognise in those circumstances any ground for condemning the wife in costs. Each case must, no doubt, stand upon its own merits so far as the exercise of the discretion of the Court is concerned. The legal question involved in the argument to-day is, first of all, whether the Court has power to make this order? and secondly, whether, if it has the power, it will exercise it in proper cases? It cannot be doubted that it has the power, for the section (51st of 20 & 21 Vict. c. 85) says, in perfectly plain words, "The Court on the hearing of any suit, proceeding or petition under this Act, and the House of Lords on the hearing of any appeal under this Act, may make such order as to costs as to such Court or House respectively may seem just: provided always, that there shall be no appeal on the subject of costs only." The next question is, whether the power ought ever to be exercised in the manner proposed? I see no reason why it should not. I see no reason why, if a wife has separate property, she should be permitted to enter into any amount of litigation, however frivolous or vexatious, and then be allowed to retire from Court free from any portion of the burden which she has cast upon her husband. It is contrary to natural justice that she should

be allowed to do so. The only reason why a wife stands in a different position from other suitors is, that the law presumes the wife has no property. The law presumes that all the property is in the hands of the husband, and so the matter stood in former times; but under the auspices of Courts of Equity, the wife has achieved the power of holding property to her separate use, and to the extent to which she has separate property the reason of the rule which made her a privileged suitor ceases. There is no reason why, under such circumstances, she should not litigate on the same footing as any other suitor. Of course the Court will bear in mind, in using the discretion vested in it, certain other considerations, one of which is referred to in *Carstairs v. Carstairs and others* (2). It is there stated that it was the rule of the House of Lords to see, before the husband got a divorce from the wife, that some provision was made for the maintenance of the wife, and in no case was it likely to make an order on her for costs where the effect would be to absorb her means of livelihood. The Court must therefore look, not only to the fact that the wife has separate property, but also to the amount of that property, before it will make an order upon her for costs. In this case the wife has considerable separate property. I do not know what the costs may be, but I presume they are not very heavy, and I can have no hesitation in making an order upon her to pay them.

Attorneys—Rowland Miller, for petitioner;  
Alfred Jones for respondent.

PROBATE. } In the goods of JAMES  
1869. } SEBASTIAN GILL.  
Nov. 16. }

Will—Reference to "written directions affixed to Will"—None affixed—Insufficient reference.

A executed, in 1866, a will which referred to written directions, which he intended to form part of the will. This paper, which began, "To my executors,—I have written the following directions for your

guidance with respect to many things and goods not mentioned in my will, which said will very probably will be found at William Weedon's, Esq., solicitor," was further subsequently executed by him according to the provisions of the Wills Act. In 1868 he executed a second will, which revoked all previous wills, and contained the following clause: "All my books, pictures, sketches, guns, rods, goods and chattels in and about the rooms I shall occupy at the time of my decease, I wish my executors to dispose of faithfully and conscientiously according to the written directions left by me, and affixed to this my will, trusting, as I unhesitatingly do, in their honour and integrity." Nothing was affixed to the will, which remained in the possession of Mr. Weedon, the solicitor who prepared it, and the only paper of written directions forthcoming was that which the testator intended to form part of the will of 1866:—Held, that it was not incorporated by the reference in the will of 1868, and that as an executed testamentary paper it was revoked by such will.

James Sebastian Gill, late of Reading, in the county of Berks, gentleman, died leaving a duly executed will and codicil. The will, which was dated the 2nd of November, 1868, and revoked all former wills and codicils, contained the following clause:—

"All my books, pictures, sketches, guns, rods, goods, and chattels in and about the rooms I shall occupy at the time of my decease, I wish my executors to dispose of faithfully and conscientiously, according to the written directions left by me, and affixed to this my will, trusting as I unhesitatingly do in their honour and integrity."

The will was prepared by Mr. Weedon, solicitor, of Reading. In doing so he used as a draft a former will, which the testator executed on the 9th of August, 1866, and which referred in almost similar terms to a paper of written directions which he intended to form part of his will. This paper was further executed by him, according to the provisions of the Wills Act, on the 12th of August, 1866, and ran as follows:—

"To my executors,—

"Rev. F. T. Gill, &c., and

"R. Haynes Lovell, &c.

"I have written the following directions for your guidance with respect to many things and goods not mentioned in my will, which said will very probably will be found at Wm. Weedon's, Esq., solicitor, Reading. . . . Give some little remembrance to Mrs. and Miss Barnes, not forgetting the servants at the lodge." The paper then provided for the distribution of a number of articles, to wit, books, pictures, sketches, folio-stand and folio book of engravings, fishing-tackle and rods, herbarium (to be given to an institution in Reading), gun, sword, card-box, camp bedstead and washhand-stand, wearing apparel and clothing; and concluded: "But above all I forbid you to spend much money on my funeral, for it is only for the benefit of the undertaker who lays you under the sod or stone. 40l. (forty pounds) quite sufficient for any decent funeral."

The will of 1868 remained in the possession of Mr. Weedon from the time of its execution until the death of the testator. No written directions were affixed to it. Search was made among his papers, and the only document which was found was the paper of directions which he intended to form part of the will of 1866.

The above facts were verified by affidavits.

C. A. Middleton moved the Court to decree probate of the will and codicil with the paper of instructions dated August, 1866, as incorporated by reference. It was further well executed as a testamentary paper, and as such was entitled to probate. He referred to

*In the goods of Mary Sunderland* (1);

*In the goods of Lady Truro* (2);

*In the goods of James Gordon Duff*

(3); *Stewart v. Stewart* (4)

LORD PENZANCE.—I am of opinion that this paper cannot be incorporated with the will. What the testator did was this: In August, 1866, he made a will, according to the statement of the attorney, something similar to that now in existence. At

(1) 35 Law J. Rep. (n.s.) Prob. M. & A. 82; s. c. 1 Law Rep. P. & M. 178.

(2) 35 Law J. Rep. (n.s.) Prob. M. & A. 89; s. c. 1 Law Rep. P. & M. 201.

(3) 4 Notes of Cases 474.

(4) 3 Sw. & Tr. 192.

the date of its execution he wrote a paper beginning thus:—"I have written the following directions for your guidance (that is, his executors) with respect to many things and goods not mentioned in my will," and he went on to provide for the distribution of a great number of articles belonging to him. That was intended to form part of the will of 1866, and was duly executed as a testamentary document. In 1868 he made a new will in which he revoked all former wills, and in that will there is a clause which directs "all my books, pictures, guns, rods, goods and chattels, in and about the rooms I shall occupy at the time of my decease," to be disposed of by the executors "according to written directions left by me and affixed to this my will." Well, the will is found, but nothing is affixed to it, and nothing is discovered corresponding to the directions he has described. The Court is then asked to go back to the directions affixed to the former will. I see great difficulty in doing that. In fact it is impossible. It is extremely probable that the testator made a fresh list, or more than one, and that he afterwards tore them up as often. If, indeed, the existing list had answered to the tenor of the list described in the will, there might have been something to say, but it does not, for it disposes of many articles which cannot be said to answer the description of "articles in and about my rooms." I am of opinion, therefore, that the directions cannot form part of the will of 1868. Then, it is said that the directions, which were well executed, are not revoked, and therefore may be admitted to probate. But it is quite clear that there being language in the will of 1868, revoking all other former wills, if there is not a special reference, excepting the directions, they must be revoked too. The motion, therefore, must be refused.

---

Attorneys—Pitman & Lane, agents for Clarke & Weedon, Reading.

---

PROBATE. }  
 1869. } OLIVER AND ANOTHER v. JOHNS  
 Nov. 30. } AND OTHERS.

*Will—Execution—Signature of testator  
 not seen by witness—Acknowledgment—  
 Attestation by witnesses.*

*A asked B, in the presence of C, to witness her will, which lay open on the table. B signed the will, but did not observe A's signature. B then handed the pen to C, but did not see him sign his name. The will was prepared by C. The attestation clause stated that it was signed by the witnesses in the presence of each other, and C had also prepared other wills:—Held, a good execution; the circumstances warranting the presumption that A's signature was on the paper when B signed, and that C, who was aware of the requirements of a will, signed before B left the room.*

The testatrix, Jenefer (*alias* Jane) Johns, late of St. Austell, in the county of Cornwall, spinster, deceased, died in March, 1868, leaving a will, dated 18th April, 1863. It had the following attestation clause: "Signed and published as and for the last will of the said Jane Johns, who signed the same in our presence, and who in each other's presence do sign as witnesses, the day and year above written;" and purported to have been witnessed by Jane Jenkins and Richard Glanville. Glanville had since died.

Jane Jenkins deposed as follows as to the execution of the instrument: I knew the deceased Jenefer Johns. I recollect having been asked by Richard Glanville to go to her house. I saw the paper (the will) there. The deceased said it was her will, and asked me to put my name to it. I signed my name. I did not see her signature. Richard Glanville and Miss Geach (since dead) were also present. I did not see Glanville write his name. I gave him the pen after I had signed, and directly came away.

Cross-examined: The paper was open when I signed. I saw no name on it. I cannot swear that the signature was not there. When I signed I walked straight out of the room.

On re-examination the witness, who was

short-sighted, stated that she had not had her spectacles on when she signed.

[It was proved that Glanville, who was a grocer, had made other wills.]

Pritchard, for interveners, who were allowed to come in and prove the due execution of the will, referred to *Beckett v. Howe and others* (1), and submitted that there had been a sufficient acknowledgment of her signature by the deceased.

Dr. Swabey, for the defendants, admitted that there was a sufficient acknowledgment if the signature were on the paper when the witnesses signed, but contended that it rested on the parties setting up the will to satisfy the Court affirmatively of the fact. Here there was no such proof. Further, it was essential to due execution that the witnesses should have attested and subscribed in each other's presence. It was held not to be necessary in *Faulds v. Jackson* (2), but in a later case, *Casement v. Fulton* (3), it was decided otherwise.

LORD PENZANCE—after referring to the principle laid down in *Gwillim v. Gwillim* (4), and followed in *Beckett v. Howe and others* (1), continued,—I am satisfied that the signature of the testatrix was on the paper when the witnesses signed, and that there was a sufficient acknowledgment of it. As regards the witnesses signing it in each other's presence, without meaning to decide the point, the conclusion which I come to is that they did sign in each other's presence. It is true that the witness says they did not; but inasmuch as she put the pen into Glanville's hand, that he had prepared the will, that he had prepared the attestation clause, which states that the witnesses signed in each other's presence, and had also prepared other wills, the reasonable conclusion is that when she put the pen into his hand, he signed his name, and before she left the room. The reasonable conclusion is that the will was properly executed, and the Court so pronounces.

Attorneys—Emmett, Watson & Emmett, for the interveners; Westall & Roberts, agents for R. Harfield, Southampton, for defendants.

(1) *Ante*, page 1.

(2) 6 Notes of Cas. Suppl. 1.

(3) 5 Moore P.C. 130.

(4) 1 Sw. & Tr. 200; s.c. 29 Law J. Rep. (N.S.) Prob. M. & A. 31.

PROBATE. }  
1869. } In the goods of E. L. COOPER.  
Nov. 23. }

*Administration, with Will annexed—Executor resident abroad and bankrupt—Small Estate—Grant to Legatee*—20 & 21 Vict. c. 77. s. 73.

Where the executor of a will was bankrupt and resident in Australia, the Court granted letters of administration, with the will annexed, to one of the legatees, but required that before the letters issued, the written consent of the next of kin and the persons entitled to the undisposed of residue, should be brought in and filed in the Registry.

Elvira Louisa Cooper, late of Bernard Street, in the county of Middlesex, spinster, deceased, died in August, 1869, having made her last will and testament dated July 22, 1865, whereof she appointed John Johnson sole executor. In December, 1868, Johnson, who had in 1866 executed an assignment of his property for the benefit of his creditors, was adjudicated a bankrupt, and in January, 1869, he left England for Australia. He is now believed to be living at Ballarat, Victoria, and is not, it was alleged, likely to return. The value of the estate was under 300*l.*, and the legatees were the mother and sisters of the deceased.

Searle moved the Court, under these circumstances, to decree letters of administration, with the will annexed, to Alice Grace Cooper as one of the residuary legatees, under the 73d sec. of the Probate Act.

LORD PENZANCE.—There are no residuary legatees appointed by the will. It is not necessary, however, to make out that the applicant is residuary legatee. I can make the grant to anybody under section 73; but before it issues, you must bring into the Registry the written consent of the next of kin and the persons entitled to the undisposed of residue.

Attorneys—Benham & Tindell.

## MATRIMONIAL.

1869.

Dec. 7.

KELLY v. KELLY.

*Judicial separation—Undue exercise of marital authority—Cruelty.*

*The wife being seriously ill, was advised by her medical attendant to leave home for a time. The husband refused. Having become worse, she left home without his consent, and stayed away some months, which she passed with her relations. On her return home she was deposed by her husband from her natural position as mistress of his house; she was deprived of the use of money entirely; all that she required had to be put down on paper, and her husband provided it if he thought proper. Having refused to tell her husband on one occasion of going into town everywhere that she had been, an interdict was placed on her going out at all; those whom she desired to see were forbidden the house, and she was prohibited from writing any letters unless the husband saw them before they were posted. Under this treatment her health again broke down:—Held, an undue exercise of marital authority, and to constitute legal cruelty.*

This was a suit for judicial separation, instituted by the wife by reason of the cruelty of her husband. The respondent, a clerk in holy orders, filed an answer, in which he denied the cruelty, and alleged that the acts complained of were done in the legitimate assertion of his rights as a husband. The case was heard in the Michaelmas sittings, and occupied the Court for several days. The facts are fully stated in the judgment, which the Court took time to consider.

Dr. Deane (with him *Inderwick*) appeared for the petitioner.

Mr. Kelly conducted his own defence.

LORD PENZANCE now delivered the following judgment:—The peculiar and distinguishing feature of this case is the adoption by the respondent of a deliberate system of conduct towards his wife, with the view of bending her to his authority. A man who sets about to achieve this end by purposely rendering a woman's daily life unhappy is in danger of overstepping his rights, as he is pretty sure to

fall short of his duties. The respondent in this case has, in my judgment, done both. Without disparaging the just and paramount authority of a husband, it may be safely asserted that a wife is not a domestic slave, to be driven at all cost, short of personal violence, into compliance with her husband's demands. And if force, whether physical or moral, is systematically exerted for this purpose in such manner, to such a degree, and during such length of time as to break down her health and render serious malady imminent, the interference of the law cannot be justly withheld by any Court which affects to have charge of the wife's personal safety. In cases of this kind everything depends on degree. Many acts, which are venial in themselves, become reprehensible when they take their places as parts of a system. Others, justifiable on occasions, lose their justification when continuously and purposely repeated. In considering a charge of cruelty, therefore, the conduct of the parties inculcated can only be justified, or the reverse, as a whole; and if, upon a general review, the Matrimonial Court is of deliberate opinion that cohabitation could not be resumed with safety to the wife, it is bound by the dictates of common sense, as well as upon principles repeatedly avowed and acted upon in a long series of decisions, to step in and forbid its resumption. No doubt in cases such as the present, where the personal violence used is of a trifling character, it behoves the Court to be sedulous in inquiry and slow in conviction. It should be entirely satisfied that the conclusion of the wife's danger is clearly reached, and on reliable evidence. Moreover, the decisions of my predecessors have imported this further proposition as a condition of the Court's interference, that the troubles of the wife are not owing to her own misconduct. "If," said the Court in *Dysart v. Dysart* (1), "a wife can insure her own safety by lawful obedience and by proper self-command, she has no right to come here, for this Court affords its aid only when the necessity of its interference is absolutely proved." I do not stop to inquire how far this last proposition would stand the

(1) 1 Robert. 140.

test of cases that might possibly arise in which the safety of a weak, misguided, infirm woman, incapable of self-command, might be gravely imperilled by continued cohabitation. For the decision of this case I fully adopt this condition, and setting out on the above principles, I proceed to inquire, what has Mrs. Kelly suffered, from what cause, and with what result upon her health?

There is little variance or dispute about the leading facts. Towards the close of the year 1867 Mr. Kelly informed his wife that a sum of 5,000*l.* which had been bequeathed to her by her sister had been in great part lost by the investments he had made of it. Unable to obtain from her husband a clear idea of her rights and those of her son under her sister's will, she wrote to her brother-in-law, Colonel Thornbury, to see the will for her and explain it. This he did, and wrote her the result, telling her that the money was in law at the entire command of her husband, and that her son had no rights in the matter. Some further correspondence passed between the petitioner and Colonel Thornbury, and between the petitioner and her brother. These letters falling into the hands of the respondent were vehemently resented by him, and were directly or indirectly the cause of much, if not most, that followed. About the same time the petitioner's son quarrelled with his father, and was obliged to quit the house. The petitioner, to some extent, took the son's part, which increased the resentment of the respondent. From these circumstances the respondent took up the idea, which he afterwards allowed to fill his whole mind, that his wife was plotting and conspiring against him. He commenced opening her letters, and calling her a vile traitor and apostate. He told her that "no modest woman would associate with her more than with a prostitute," "that she had given her confidence to another man," &c. He refused to sit at meals with her, he insisted on occupying a separate bedroom, he told the servants to take orders from him, and not from his wife, he forbade her to visit the poor in the district, to which she had been accustomed, and desired her not to attend the ministration of the sacrament. Some months

passed in this way. The respondent kept apart from his wife all day except at family prayers, and even then he appears to have had little or no communication with her except in the way of rebuke and reproach. At length, in the month of May, 1868, the petitioner became ill, her appetite wholly failed, she lost the senses of taste and smell, and towards the end of the month felt a sensation of numbness in her arm, which gave reason to fear paralysis. She consulted Dr. Drysdale. He advised her to leave home. Her husband refused, and on the 29th of June, having become worse, she left her home without his consent. I am satisfied from the medical testimony that at this time the occurrences which had taken place, and the isolation and reproaches to which she had been subjected, had so preyed upon her nervous system and general health that serious consequences were to be feared, if she were not for a time withdrawn from the life she was leading. Mrs. Kelly stayed away nearly four months, which she passed with her relations. The respondent wrote her many letters, in which he enlarged upon her sin. He expressed no care for her health, and none that she should return. In October she returned. Between that time and the January following, when she finally left home, she was purposely submitted to the following treatment. She was entirely deposed from her natural position as mistress of her husband's house. She was debarred the use of money entirely; not only were the household expenses withdrawn from her control, but she was not permitted to disburse anything for her own necessary expenses; every article of dress, every trifle that she required, had to be put down on paper, and her husband provided it if he thought proper. Having refused on one occasion of going into the town to tell her husband everywhere that she had been, an interdict was placed on her going out at all. At one time the doors were locked to keep her in, at another a man-servant was deputed to follow her; at another the respondent insisted on accompanying her himself whenever she wished to go abroad. On these occasions he appears to have occupied the short time they were together in what he called putting her sin before her in strong, coarse,

and abusive terms, applying to her the same epithets and language as would be applicable to a woman who had been guilty of adultery. He took no meals with her; he occupied a separate bedroom; he passed no portion of the day, however small, in her society. They met, as before, only at family prayers, and if he spoke to her at all it was only to give some directions or to reproach her. Save on one or two occasions she saw no one. Those whom she desired to see were forbidden the house. She was absolutely prohibited from writing any letters unless the husband saw them before they were posted. She was thus, as far as the respondent could achieve it, practically isolated from her friends. Meanwhile, the care of the household was confided to a woman, hired for the purpose, who was directed not to obey Mrs. Kelly's orders without the respondent's directions. In short, she was treated like a child or a lunatic, and in this light she was actually regarded by the woman just mentioned, when she first came to her place; and this, be it remembered, though she had passed the mature age of 60 and had been married to the respondent for 27 years. With no occupation, debarred the society of her husband and her son at home, and that of her friends abroad, withheld from the performance of her household duties, subordinated to servants, penniless, and, so far as her husband could effect it, friendless, the daily life of this lady was little better than an imprisonment, the solitary silence of which was broken only by the language of harsh rebuke, foul words, and epithets of insult, indignity, and shame. What wonder that, under so grievous an oppression, her health again gave way? She could not eat, she hardly slept at all, she was subject to constant trembling and fainting, she woke involuntarily screaming at night, and her nervous system was so shattered that the medical witnesses declared paralysis or even madness to be imminent.

Now, upon this testimony it is important to observe that there was no contradiction. The respondent did not, even upon his own oath, deny or qualify the petitioner's evidence as to her state of health. On this head (the most important in the whole case) the respondent confined

himself to the suggestion that her miserable condition was brought about, not by his treatment, but by vexation at the discovery of her own treachery. Her actual condition and danger he did not call in question, and yet it is to a repetition of this treatment, with its almost inevitable results, that the respondent expects this Court to order Mrs. Kelly to return. That it should be asked to break in upon his rights as a husband by depriving him of his wife's society, or, I should rather say, of her presence under his roof, is to him a matter of surprise and indignation, for, as he truly says, he has not beaten her. He has, indeed, on two or three occasions, made her feel that his superior physical strength was always ready to be exerted to constrain her movements, but he has inflicted no bruises and done no visible bodily hurt. Such a view of the law, if correct, would be little to its credit, and to coincide with it would be to abrogate the first duty in these matters of the Matrimonial Court—the protection of the wife's health and safety. These, then, are the things which Mr. Kelly did, and these the results upon his wife's health. The remaining question is, Why did he do them? His answer, I believe, would be to bring his wife to penitence and submission. But penitence for what, and submission to what? Although he has never in his numerous letters, so far as I can discover, stated with great clearness what it was that he wished her to do, it is, I think, to be sufficiently gathered from them that he desired her to admit that she had suspected him of fraud, and had traitorously conspired with others to fasten that charge upon him. For this he would have her express remorse and contrition, suing for his pardon, and humbly confessing her guilt. Mrs. Kelly refused to do so, because she says she never did in fact suspect him of anything false and dishonourable, and never did take counsel with others to bring the charge of it against him. Writing on the 1st of August, 1868, she says, "I could not tell a lie in this matter. I did not design any treachery, and I will never say I did." And further on, "I am sorry I did not ask your leave to see the will. I had a right to do so, but had I at all thought of its vexing you I would not

have acted as I did. Surely, now, as what has taken place cannot be recalled, it would be better to bury the past in oblivion; let bygones be bygones; forgive and forget mutually, and seek to spend the little time that remains of this life on earth together in peace. . . . I promise on my part to do all in my power towards this object, but my position must be such as not to cause a scandal. If you will not do this, will you tell me what you do wish, and what is to be the end of it?" Writing again on the 14th of September, 1868, she said, "I never thought you had done anything dishonourable, and certainly I never tried to prove it. . . . You are under a complete delusion as to my conduct. My desire is to act towards you with the submission, obedience, and even affection of a wife."

It would be difficult for a wife to play her part in so critical and painful a situation in a more becoming manner. Surely such language as this should have satisfied any reasonable man. It did not satisfy Mr. Kelly, because, as it appears to me, he had suffered his mind to become filled and mastered by notions utterly extravagant, both as to the authority of a husband and the legitimate means of enforcing it. He invokes the theory of the law that the wife should be subject to the husband, but he forgets to add this qualification—"in all things reasonable." He asserts that he is within the law if, refraining from physical violence, he only puts such pressure on his wife as shall force her to obey him. But, again, he should add—"provided the means used to exert moral pressure be reasonable." But what if reasonable means are insufficient, and a wife still holds out against her husband's lawful will? The answer is that the law can neither do nor sanction more. The law, no doubt, recognises the husband as the ruler, protector, and guide of his wife. It makes him master of her pecuniary resources; it gives him, within legal limits, the control of her person; it withdraws civil rights and remedies from her save in his name. Conversely, the law places on the husband the duty of maintaining his wife, relieves her from all civil responsibilities, and excuses her even in the commission of great crimes when act-

ing under her husband's orders. By these incidental means it has fenced about and fostered the reasonable supremacy of the man in the institution of marriage. In so doing it is thought by some that the law is acting in conformity with the dictates of nature and the natural characteristics of the sexes. Be that as it may, the subordination of the wife is doubtless in conformity with the established habits and customs of mankind. With all these advantages, then, in his favour, the law leaves the husband, by his own conduct and bearing, to secure and retain in his wife the only submission which is worth having—that which is willingly and cheerfully rendered. And if he fail, this Court cannot recognise his failure as a justification for a system of treatment by which he places his wife's permanent health in jeopardy, and sets at naught, not only his own obligations in matrimony, but the very ends of matrimony itself, by rendering impossible the offices of domestic intercourse and the mutual duties of married life. The cruelty of the respondent is established, and the Court decrees a judicial separation with costs.

Attorneys—Gregory, Rowcliffes, & Rawle, agents for Duncan, Squarey & Co., Liverpool, for petitioner; the respondent in person.

PROBATE.  
1869.  
Dec. 21.

*In the goods of PORTER.*

#### *Will—Contingent Will—Test.*

*A test for ascertaining whether a will is contingent is the question whether the disposition of property is dependant upon the happening of some event or calamity referred to in the will, or whether the imminence of such event or calamity is merely a reason for making the will. In the former case the will is contingent; in the latter it is not.*

Lieutenant-Colonel Porter, on the 25th of September, 1862, executed in England a will, which commenced thus:—

"Being obliged to leave England to join my regiment in China, and not having time to make a will, I leave this paper, containing my wishes and desires, should



anything unfortunately happen to me while abroad. I wish everything that I may be in possession of at that time, or anything appertaining to me hereafter, whether in land, goods, chattels, or money, to be equally divided between my two children, T. C. A. Porter and E. C. Porter, share and share alike; and should either of them die, then the survivor to inherit the whole."

He then appointed the grandmother and an uncle of his children trustees and guardians of their persons and property.

Colonel Porter left England for China in 1862 and returned in 1863 to England, where he died in 1869 without having made another will, leaving the said children, who were minors, his only next of kin.

*C. A. Middleton* moved the Court to grant probate of the will to the grandmother and uncle of the deceased's children as their testamentary guardians.—The question is, whether or not the will is a contingent will. I submit that it is not contingent. The introductory sentence does not, *per se*, make the will contingent. It only assigns a reason for not then making a more formal will. The words, "everything that I may be in possession of at that time," no doubt refer to the time when the deceased should be abroad; but the words, "or anything appertaining to me hereafter," imply a more extended time, *i. e.* a time subsequent to his return. He cited *In the goods of Martin* (1), *In the goods of Dobson* (2).

**LORD PENZANCE.**—I am obliged, and very reluctantly, to refuse this application. It appears to me that this will is contingent. In looking at the cases which bear upon the point, there appears to be this distinction between them: The majority of them are cases in which a testator refers to some possible impending calamity in connection with his will; and the question is, whether in referring to the imminence of that calamity he intends to limit the operation of his will to the period during which that calamity can

happen. If the language used can, by reasonable construction, be considered to mean that the testator refers to this calamity, or to the period of time in which it may happen, as a reason for making his will, then only is the will not contingent. But if a testator refers to a calamity or the possible occurrence of an event in language which is mixed up with the disposition of his property, so that he makes the disposition of his property depend upon that event, then the Court must hold the will to be contingent, because if it did not it must violate the language of the will. Here the only question is, in which category does this instrument fall. Passing in review the previous cases, the first are, *In the goods of Winn* (3), and *Roberts v. Roberts* (4). In both of these the will was held to be contingent, and in both the disposition of property was only to take effect in the event of something happening which did not happen. The strongest case is one cited in the last edition of *Williams on Executors*, *In the goods of Thorne* (5). In that case the testator directed his property to be disposed of in a certain way—"in the event of my death while serving in this horrid climate, or in the event of any accident happening to me." That will was held to be contingent, the facts being that though the man did not die abroad, he was invalided and reached England only just in time to die. There are two other cases in which the Court held a will not to be contingent, but in both of them the language used in the will may be referred to the intention of the testator merely to give a reason for making his will. In the case *In the goods of Martin* (1), the event of the testator's death is given as a reason for making the will. The question here is, whether that is the case in the paper before me. The first sentence alone would have placed it in that category, "Being obliged to leave England to join my regiment in China, and not having time to make a will, I leave this paper containing my wishes and desires, should anything unfortunately happen to me while I am abroad." If

(1) 36 Law J. Rep. (N.S.) Prob. & M. 116; s. c. Law Rep. 1 Prob. & M. 380.

(2) 35 Law J. Rep. (N.S.) Prob. & M. 54; s. c. Law Rep. 1 Prob. & M. 88.

(3) 2 Sw. & Tr. 147.

(4) 31 Law J. Rep. (N.S.) Prob. & M. 46; s. c. 2 Sw. & Tr. 337.

(5) 34 Law J. Rep. (N.S.) Prob. & M. 131.

the will had stopped there this Court might have said those words were merely intended to give the testator's reason for making a will. The words which create the difficulty are these, "I wish everything that I may be in possession of at that time," &c. The words "at that time" clearly refer to the time when something should unfortunately happen to him abroad, and the disposition of his property was to take effect at the time of his death abroad. It is said that the subsequent words, "and anything appertaining to me hereafter," enlarge the scope of the will. I do not think so. It is plain that what the testator meant was this: I wish everything I have in my possession at the time of my death abroad to be disposed of in a certain way, "and also anything which may come to me after my death." The words "at that time," in my opinion tie up the disposing part of the will to a period of time when a certain event was to happen, viz., "his death abroad." The Court, therefore, holds the will to be contingent.

*Middleton*.—Will your Lordship allow the testator's children to elect the persons mentioned in the will as their joint guardians, and decree administration to them as such guardians?

LORD PENZANCE.—Yes.

Attorney—A. G. Blake, Croydon.

#### MATRIMONIAL.

1869.

Nov. 17.

PARKINSON v. PARKINSON.

*Desertion—Deed of Separation agreed to a year afterwards, and fully executed—Wife's Right to Relief.*

*A husband deserted his wife. A year afterwards, through the intervention of a mutual friend, a deed of separation was agreed to by which the husband covenanted to make the wife an allowance, and charged it upon his reversionary interest in a sum of money. The deed was fully executed, but no part of the allowance was paid:—Held, that the wife had bargained away her right to relief, and could not establish the charge of desertion without cause for two years.*

*Nott v. Nott distinguished.*

This was a petition by the wife for dissolution of marriage on the ground of the husband's adultery, coupled with desertion without cause for two years and upwards. There was no appearance by the respondent.

The parties were married in New Zealand in 1861. They returned to England in the following year and lived with the respondent's mother. The respondent had been an officer in the army, but sold out in 1864. In August, 1865, he deserted his wife, and from that time until the case came on for hearing cohabited with another woman. Some time after the desertion, Mr. Paine, a mutual friend, saw the respondent and remonstrated with him upon his conduct. The result was, that a deed of separation was drawn up by which the respondent covenanted to make his wife an allowance of 150*l.* a year, which he charged upon his reversionary interest in a sum of 5,000*l.*, and she on her part agreed to live separate and apart from him. This deed, which was dated the 16th of April, 1866, was executed by the husband and wife, and by Mr. Paine, as a trustee on her behalf, but no part of the allowance was ever paid by the respondent, nor did he in any way contribute to his wife's maintenance.

Mrs. Parkinson, in the course of her examination, stated that she had no wish to live apart from her husband, and that she had been told the object of the deed was simply to secure her a maintenance. Mr. Paine also stated that he understood the deed was not to prejudice her right to a divorce.

*Dr. Swabey*, for the petitioner, submitted that under the circumstances the deed was no bar to her right to a dissolution of marriage, and referred to *Nott v. Nott* (1).

[THE JUDGE ORDINARY.—Is it not a similar case to *Crabb v. Crabb* (2)? The deed is fully executed, and the wife has agreed to live separate and apart from her husband. The principle of the deci-

(1) 36 *Law J. Rep.* (n.s.) Prob. & M. 10; s. c. *Law Rep.* 1 P. & D. 251.

(2) 37 *Law J. Rep.* (n.s.) Prob. & M. 42; s. c. *Law Rep.* 1 P. & D. 601.

sion in *Nott v. Nott* (1) was, that the wife had not agreed to live separate and apart.]

There was an inchoate desertion in the month of August, 1865. The deed was simply a device on the husband's part to induce the wife to live apart, and it has never been acted on. The case is therefore within the decision in *Nott v. Nott* (1). The only difference between them is this, in the one case the husband was destitute, here the wife was destitute.

THE JUDGE ORDINARY.—The Court is satisfied as to the adultery, but the question is, whether the facts of the case would justify it in holding that there has been a desertion without cause for two years. There is no doubt that the husband left the wife in 1865, and under such circumstances, that if he had never seen her again and they had no more to say to one another for two years, a case of desertion would have been completed. But in the following year, 1866, Mr. Paine, who was a trustee under certain family deeds, and a friend both of the husband and of the wife, went to the husband and remonstrated with him for having left his wife, and discussed with him the question of making some provision for her. The result of that discussion was that the husband agreed to enter into a deed and covenant to pay his wife 150*l.* a year, and that deed was fully and completely executed. It was executed by the husband, it was signed by the wife, and it was executed by a trustee on her behalf. The husband had not the means of paying the money, but he had a reversionary interest in 5,000*l.*, and it was covenanted that the allowance should be made a charge on that reversion. There is no doubt that the legal effect of that deed was such that the wife obtained a distinct money benefit under it. She, on her part, agreed to live separate from her husband, and the trustee covenanted for her to the like effect. It is now suggested that the Court should enquire into what was intended by her when she executed the deed. But it is clear that such evidence is inadmissible. The question, then, is, whether a woman who enters into an agreement that her

husband shall live apart from her can be said to have been deserted without just cause. I repeat the opinion I formed in *Crabbe v. Crabbe* (2), that she cannot. The case of *Nott v. Nott* (1) does not apply. The *ratio decidendi* in *Nott v. Nott* (1) was that the wife never agreed to live separate and apart from the husband. The making of a deed was contemplated, and some of the parties executed it, but the party whose execution was to make it an efficient and binding act was the trustee who covenanted for the wife, and he never signed it, so that the deed was never completed. In this case the Court is reluctantly obliged to deal with the facts as they are, and to hold that the wife has bargained away her right to relief on the ground of desertion, and that the charge of desertion for two years is not established. She is entitled to a decree of judicial separation on the ground of adultery if she applies for it.

The case was adjourned in order that the petitioner might be consulted.

---

Attorneys—Chapman, Clarke, & Turner.

---

MATRIMONIAL. } HEBBLETHWAITE v. HEBBLE-  
1869. } THWAITE (*The Queen's*  
Dec. 18. } *Proctor intervening*).

*Adultery, Evidence of—Competence of Witness to give Evidence of his or her Adultery—Privilege of Witness to refuse—32 & 33 Vict. c. 68. s. 3.*

*The proviso in 32 & 33 Vict. c. 68. s. 3, that "no witness, whether a party to the suit or not, shall be liable to be asked, or bound to answer, any question tending to shew that he or she has been guilty of adultery," does not render inadmissible the evidence of a witness that he or she has committed adultery.*

*The witness may claim the protection of the statute or give the evidence, but a party to the suit cannot object to its admission.*

In this case, after a decree *nisi* for dissolution of marriage on the ground of the wife's adultery had been pronounced, the Queen's Proctor intervened, and amongst other charges alleged that the husband had committed adultery with a woman named Clara Phillips. The husband traversed the charges, and the issues came on for trial by a special jury.

*The Attorney-General (Sir R. P. Collier) (J. F. Collier with him)*, for the Queen's Proctor, called Clara Phillips as a witness to prove the alleged adultery.

*Dr. Spinks (Inderwick with him)*, on behalf of the husband, referred to 32 & 33 Vict. c. 68, s. 3 (1), and objected that the witness could not be asked any question tending to shew that she had committed adultery with Mr. Hebblethwaite.

*The Attorney-General.*—The objection cannot be taken by a party to the suit. The witness may claim the protection of the statute, and refuse to give evidence as to her adultery, but if she does not object to give it the evidence is admissible.

*Dr. Spinks.*—If that be so, the words "liable to be asked or" are surplusage. They were probably inserted for the purpose of excluding the inference of guilt which might be drawn if a witness could be asked questions imputing adultery and should refuse to answer.

**THE JUDGE ORDINARY.**—I am clear as to the intention of the legislature, although I cannot say that the language used in the statute is not capable of the interpretation put on it by Dr. Spinks. The general intention was to protect the witnesses whose

evidence was rendered admissible by the statute. The provision was not intended to apply to the evidence by which the case of either side might be supported independent of the evidence of the parties. It was not intended to narrow the sources of evidence for or against a petitioner or respondent, but to protect the witnesses, and I doubt whether it is competent to counsel to take advantage of it. It is the duty of the judge to see that the witnesses have the protection given them by the statute. The words, "No witness shall be liable to be asked or bound," clearly refer to the position of the witness, and their meaning is this: When a person is called into the witness-box, and it is proposed to question him or her for the purpose of obtaining a statement that he or she has been guilty of adultery, the witness may claim the protection of the statute, and say that he or she is not desirous of being interrogated on the subject. I think the words, "No witness shall be liable to be asked," are not surplusage, because without them a string of questions might be put one after the other to a witness who would have to refuse to answer them one by one, whereas with those words it becomes the duty of the Judge to refuse to allow any of the questions to be put as soon as the witness claims the protection of the statute.

The JUDGE ORDINARY then told the witness that she was not bound to answer any question tending to shew that she had committed adultery.

[The witness said that she did not object to give evidence, and was examined.]

The jury found that Mr. Hebblethwaite had not committed the alleged adultery.

The decree *nisi* was afterwards made absolute.

---

Attorney—James Carter Dalton.

---

(1) Which enacts—"The parties to any proceedings instituted in consequence of adultery, and the husbands and wives of such parties, shall be competent to give evidence in such proceeding. Provided that no witness in any proceeding, whether a party to the suit or not, shall be liable to be asked or bound to answer any question tending to shew that he or she has been guilty of adultery, unless such witness shall have already given evidence in the same proceeding in disproof of his or her alleged adultery."

MATRIMONIAL.  
1869. }  
Nov. 3. } CONSTABLE v. CONSTABLE.

*Alimony Pendente Lite—Wife's petition—No answer—Right of husband to cross-examine witnesses called in support of petition—Practice.*

*The wife filed her petition for alimony, pendente lite. The husband filed no answer thereto:—Held, that he was not entitled to cross-examine witnesses called in support of the petition.*

The wife filed her petition for alimony, *pendente lite*, on the 5th of October, 1869. The husband filed no answer to such petition. On the 28th October the petitioner gave the usual notice required by Rule 89 (Rules and Regulations, 1866) of her intention to move the Court, on the 3rd of November, for alimony, *pendente lite*, and to call witnesses in support of her petition.

The petitioner presented herself as a witness, and deposed to the respondent's income, as set forth in her petition.

*Bosanquet*, for the respondent, claimed the right to cross-examine her.

*Holl*, for the petitioner, objected.—Not having answered, the respondent is not entitled to be heard.

[LORD PENZANCE. — The respondent might have stated his case by filing an answer on oath, but not having done so, he cannot now be heard.]

*Bosanquet* asked that the case might be adjourned, to enable the respondent to file an answer.

[LORD PENZANCE. — An adjournment would simply entail further expense. He took his own course with his eyes open, and must abide the consequences.]

It was admitted by the wife that before instituting her suit for restitution of conjugal rights, she had received, under an agreement entered into with her husband, an allowance of 14s. per week.

LORD PENZANCE.—The Court is unwilling in cases of this kind to increase the amount that was paid by mutual consent. There is no doubt that the object of the suit is to get increased alimony, but as the husband has not thought proper to

NEW SERIES, 39.—PROB. AND MAT.

come here and state his case in the ordinary way, the Court must pay some attention to the evidence of the wife.

*Alimony, pendente lite, at the rate of 16s. per week, was allotted.*

Attorneys — Miller & Miller, agents for John Suckling, Birmingham, for petitioner; Ralph Docker, for respondent.

PROBATE.  
1869. }  
Nov. 6; Dec. 14. } GRANT v. GRANT.

*Will—Parol evidence—Appointment of Executor—"I appoint my said nephew, J. G., Executor"—Wife's nephew resident with Testator and Brother's son of same name.*

*A testator appointed his "said nephew, Joseph Grant, executor" of his will. His wife's nephew of that name had resided with him for many years, and managed his business. There was also living a nephew (a brother's son) of the same name. Both claimed probate of the will:—Held, that parol evidence was admissible to shew the relation and circumstances in which the respective parties stood to the testator, and the sense in which he habitually used the word "nephew," when speaking of his wife's nephew. And the evidence shewing that the wife's nephew was the person meant, probate of the will was decreed to him accordingly.*

John Grant, late of Rugby, in the county of Warwick, dealer in marine stores, deceased, died on the 22nd of February, 1868, having duly executed his last will and testament, with a codicil thereto, dated respectively the 18th February, 1868, and 21st February, 1868. After bequeathing certain legacies to his nieces, the will continued: "I bequeath to my nephew, Joseph Grant, the sum of 500*l.*, and all the stock and household effects in the house where I now live, and I devise to my said nephew, Joseph Grant, his heirs and assigns, the said house and premises where I now live. \* \* \* I appoint my said nephew, Joseph Grant, executor of this my will." By the codicil

D

he also appointed his nephew, James Grant (since deceased), executor of his will.

Joseph Grant, the plaintiff, a nephew of the testator's wife, had lived with him for many years, and assisted him in his business. There was also a nephew of the same name—Joseph Grant—a son of the testator's brother. Both claimed probate of the will. The case now came before the Court on petition; and the question was, whether parol evidence was admissible to shew that the person intended by the testator was his wife's nephew.

*Field* (Dr. Middleton with him) for the plaintiff.—The word "nephew" has not a strict signification. It is derived from *nepos*, the original meaning of which word is a descendant. In the translations of the Bible a brother or sister's son is never called "nephew;" and in Shakespeare the wife's nephew is frequently designated "nephew."

[LORD PENZANCE.—It cannot be denied that in common parlance a man's wife's nephew is commonly called his "nephew."]

That being so, the word is equivocal, and once you establish that it is equivocal, and find two persons each coming within the designation, parol evidence is admissible to explain intention. "Nephew" has no legal signification; it is never used in the Legacy Duty Office. He referred to the *Epistle to the Colossians*, iv. 10; the *Book of Genesis* xxix. 13; the *Book of Job* xviii. 19; the *Book of the Prophet Isaiah* xiv. 22; the *first Epistle to Timothy* v. 4; Shakespeare, "Richard II.," "Richard III.," "Much ado about nothing;" *Hawkins on the Construction of Wills*; *Wigram's Extrinsic Evidence*, Proposition 5; and *Miller v. Travers* (1).

Dr. Swabey (*Chapman* with him) for the defendant:—The word "nephew" has a strict and primary meaning. It is restricted to the sons of a brother or sister. There is therefore no ambiguity, because when we come to deal with extrinsic circumstances we find only one person answering the description. The law recognises the strongest possible difference between relationship by affinity and consanguinity, hence the rule in the Legacy Duty

Office. The words in the will, in their strict and primary sense, are sensible to extrinsic circumstances, and parol evidence is therefore inadmissible. He referred to *Johnson's*, *Richardson's*, and *Webster's Dictionaries*; *Blackstone's Table of Consanguinity*; *Wigram's Extrinsic Evidence*; Propositions 1, 2, & 3; *Miller v. Travers* (1); *Smith v. Lidiard* (2); *James v. Smith* (3).

*Field* in reply, referred to *Adney v. Greatrex* (4).

*Cur. adv. vult.*

Judgment was delivered, on Dec. 14, as follows:—

LORD PENZANCE.—The question in this case is the proper construction of a will. The facts to be found in the affidavits make the testator's real meaning abundantly clear. The question is, how far and to what extent these facts can be properly used by the Court to aid in construing the will. The words to be construed are, "I appoint my said nephew, Joseph Grant, executor," &c. In the former part of the will, "my nephew, Joseph Grant," is named as a legatee. To construe this provision and apply it to the proper individual some evidence is necessary to ascertain whether the testator had a nephew named Joseph Grant. It turns out that there was living at the date of the will a son of the testator's brother, whose name was Joseph Grant. It further appears that there was also living another Joseph Grant, who was a nephew of the testator's wife, and consequently, in ordinary parlance, a "nephew" of the testator. If the word "nephew" can be properly construed by the Court to include his wife's nephew, so that there are two persons to either of whom the words of description might be applied, it is not denied that some further parol evidence would be admissible to ascertain which of the two the testator meant, and it is clear that if this field of inquiry is once entered upon, the facts will abundantly shew that his wife's nephew, who lived with him, and not his own nephew, with whom he

(1) 8 Bing. 244.

(2) 3 Kay & J., 252.

(3) 14 Sim. 214.

(4) 38 Law J. Rep. (N.S.) Chanc. 414.

had no intimacy, was the person intended. But here it is contended that the word "nephew" cannot possibly be construed to include the nephew of the testator's wife. It is said that the Court is bound by the primary signification of words used in a will, and that nothing but the primary signification in its strictest sense can be resorted to, unless that signification would produce some absurdity or render the meaning insensible. A proposition of this kind is, no doubt, to be found in Sir James Wigram's book; but a great deal turns upon the question what is meant by the expression "primary signification." It will not do to carry it too far. When a man makes his will, it is fair to presume that he uses ordinary language in its ordinary sense, and if the original signification of a word is scrupulously followed in all cases, to the exclusion of that which by the common consent and use of mankind it has in process of time acquired, the Court would be carried in some cases a long way from the testator's intention in the endeavour strictly to follow it.

Furthermore, the use and custom of particular counties and places affix to certain words and terms particular meanings. Evidence of such meanings has always been permitted in the construction of written contracts, and why not in that of a will? Thus, in the case of *Richardson v. Watson* (5), the testator had devised "the close in the occupation of Watson." Watson occupied two closes. It was contended that the word "close," though primarily and strictly applicable to an enclosure or field, was popularly applied to a farm; and Lord Wensleydale, a great authority on niceties of construction, said:—"No doubt evidence might be given to shew that Watson occupied two closes, and, generally speaking, evidence might be given to shew that the testator used the word 'close' in the sense which it bore in the county where the property was situate as denoting a farm." Now, if the popular use of a word in a particular locality may be proved and accepted, why is the popular use of the word all over the county to be rejected?

Another thing has to be considered when the Court is dealing with a personal description. It may be that the testator has been in the habit of applying a particular designation to an individual. And if the evidence may be referred to, it is plain in this case that the testator did constantly use the word "nephew" to designate his wife's nephew. If this designation, then, so used is not at variance with its ordinary and popular meaning, it seems unreasonable to reject it wholly in favour of some primary meaning which excludes that individual. The strength of such evidence ought, no doubt, to determine whether the Court can act upon it or not in each particular case, but what I am now considering is, not its effect, but its admissibility. It may be that the word "nephew," when used as the description of a class who are to take benefit under a will, must be construed to include only the sons of brothers or sisters of the testator, and in *James v. Smith* (3) it appears to have been so construed. But this does not appear to me to preclude a wider signification being attached to the word when used as an additional description of a person specified by name, to whom the word is in an ordinary and popular sense applicable. Upon the whole, then, I am of opinion that so much of the evidence as shews the relations and circumstances in which the respective parties stood to the testator, and the sense in which he habitually used the word "nephew" when referring to Joseph Grant, his wife's nephew, is admissible in placing the Court in the position of the testator, and thus enabling it to understand the meaning of his language. And the Court construes the appointment of executor to have been intended to apply to Joseph Grant, the nephew of the testator's wife, and decrees probate to him accordingly.

---

Proctors—Shephard & Skipwith, agents for F. Fuller (attorney), Rugby.

Attorneys—F. T. Dubois, agent for W. Cowdell, jun., Hinckley, for defendant.

---

PROBATE. }  
 1869. } *In the goods of FRASER.*  
 Dec. 21. }

*Probate—Paper simply revoking a Will*  
 —1 & 2 Vict. c. 26. s. 20.

*An instrument which disposes of no property, but simply declares an intention to revoke a previous will is not a will or codicil, and is therefore not entitled to probate.*

Thomas Fraser duly executed his will in 1866. Before his death in 1869, while temporarily residing in Florence, he duly executed, in accordance with the Wills Act, the following memorandum of cancellation, which was written at the foot of the last sheet of the will:—

"Florence, October 19th, 1869.

"This will was cancelled this day, in the presence of Dr. Roderick Fraser, physician, Florence, and Margaret Riley, nurse, who witnessed the signature of Thomas Fraser, Esq., both being present, and signed it as witnesses.

"Thomas Fraser.

"Rodk. Fraser, M.D.

"Margaret x Riley, nurse.  
 her mark."

Dr. Tristram moved for a grant of administration to the widow of the deceased, with the paper writing dated October 19th, 1869, annexed. He cited the cases of *In the goods of Hicks* (1), and *In the goods of Hubbard* (2).

LORD PENZANCE.—I think this case goes further than the previous cases. I had serious doubts in *In the goods of Hicks* (1), where there were words declaring an intestacy, but ultimately I was induced to grant probate. In this case what the Court has got before it is nothing but a paper stating that the deceased revoked a former will. The 20th section of the Wills Act enacts "that no will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing de-

claring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning," &c. The statute draws a distinction between wills and codicils and "some writing." I am clearly of opinion that this is some writing declaring an intention to revoke a previous will, and being only a writing of that character, it cannot be called a will: it disposes of nothing; it throws no light on the testamentary intentions of the deceased; it does not declare an intestacy; it simply revokes one particular paper. The application, therefore, must be refused.

Proctors—Fielder & Sumner.

PROBATE. } RAYSON v. PARTON AND  
 1869. } PAGE  
 Dec. 21. } (JOHNSON INTERVENING).

*Practice—Costs of heir-at-law intervening—Costs of issues found distributively.*

*An heir-at-law, who intervenes in a suit and opposes a will, is entitled to costs if the will is pronounced against.*

*When issues are found distributively, the party condemned in costs is not liable for the costs of the issues found in his favour, if they are separable from the other costs.*

The defendants propounded the will of C. Johnson who died in 1868, leaving a will made in 1867, by which, after bequeathing some small annuities to his nieces, he left the residue of his property, which was principally realty, of the value of about 12,000*l.*, to the defendants, and appointed them executors. The plaintiff, as one of the next-of-kin, opposed the will, and pleaded incapacity, undue influence, fraud, and that the deceased did not know and approve of the contents of the will. The heir-at-law, an infant, had not been cited to see proceedings, but had obtained leave to intervene, and gave notice that he intended only to cross-examine the witnesses called by the defendants. The issues were tried before the Court by a special jury, in December, 1869. The jury found the issues of incapacity, and that the testator did not know

(1) 38 Law J. Rep. (N.S.) Prob. & M. 65; s. c. Law Rep. 1 Prob. & D. 683.

(2) 35 Law J. Rep. (N.S.) Prob. & D. 27; s. c. Law Rep. 1 Prob. & M. 53.



and approve of the contents of the will, in favour of the plaintiff, and the other issues in favour of the defendants; and the Court pronounced against the will and condemned the defendants in the costs of the plaintiff and the heir-at-law, giving the defendants leave to move on the question of costs.

*Bayford*, for the defendants, moved accordingly.—First, The defendants ought not to be condemned in the costs of the two issues of undue influence and fraud which were found for them.

[**LORD PENZANCE.**—How can you draw a distinction between the evidence as directed to different issues? The evidence went to all the issues.]

Much evidence was directed specially to proof of the two issues which were found for the defendants. Secondly, The defendants ought not to be condemned in the costs of the heir-at-law, as he intervened voluntarily; the defendants opposed his intervention. As he gave notice that he only intended to cross-examine the witnesses, the defendants could not have recovered costs from him if he had failed. The effect of his intervention was materially to prolong the trial and increase the costs.

*Searle*, for the heir-at-law, was not called upon to argue.

**LORD PENZANCE.**—As to the first point, if there were any substantial part of the evidence given with respect to the pleas of undue influence and fraud which differed from the rest of the evidence, the executors ought not to be cast in the costs of it, but applying all the facts to the issues as they stood, I should say that the whole evidence applied to all the issues, and that no part was separable from the rest. As to the heir-at-law, I think it is not a fair view of his position to say that he has increased these costs. The defendants did not seek to bind him, and he was not therefore bound to have come in at the trial. He might have stood aside and have said, I will let you take your verdict as to the personalty, and at the proper time I will come in and bring my action on the realty, so that the whole case, as regards the realty, would have had to be gone through again, and the

defendants would have had to pay the costs of both proceedings. It seems to me that it would be setting a bad example if this Court were to say to an heir-at-law: If you choose to come in and litigate the realty at the same time as the personalty and so make it one and therefore a less expensive proceeding, you shall not have your costs, but you shall have them if you stand aside and make the executors go over the same ground again. It seems to me that the heir-at-law has done that which is most desirable in the interests of the defendants. He has carried on the contest with them in much the least expensive way. The order, therefore, must be confirmed, condemning the executors in the costs of the suit with the costs of this motion.

Attorney—T. Simey, for plaintiff.

Proctors—W. G. Jennings, for defendants; E. W. Crosse, for intervenor.

MATRIMONIAL.

1869.

Dec. 7.

PARKINSON v. PARKINSON.

*Amendment—Wife's petition—Failure to prove desertion—Petition allowed to be amended by addition of charge of cruelty.*

*On the hearing of her petition for dissolution of marriage, the wife proved the adultery of the husband, but failed to establish the charge of desertion:—The Court allowed her subsequently to amend her petition by adding a charge of cruelty, but intimated that strict proof would be required to support it.*

This was a petition by the wife for a dissolution of her marriage by reason of her husband's adultery and desertion. At the hearing, which took place before the Judge Ordinary, on November 17th, she failed to establish the charge of desertion, and the case was adjourned (*Vide ante*, p. 14), in order that she might be consulted as to whether she would apply for a decree of judicial separation, to which she was entitled on the ground of the respondent's adultery.

*Dr. Swabey*, on her behalf, now moved the Court to allow her to amend her peti-

tion by adding a charge of cruelty. In support of the application he relied on affidavits which were filed, and from which it appeared that in September last the petitioner was, for the first time, informed that a complaint from which she had suffered for the greater portion of her married life, and from which she still suffered, was syphilis, and that she was ignorant that the wilful communication of such a complaint by her husband constituted legal cruelty until November last, when, being in Court, awaiting the hearing of her own petition, she heard it so laid down in another case. On the following day she mentioned the facts to her solicitor.

The Court allowed the petition to be amended by adding a charge of cruelty, but intimated that strict proof would be required to support it at the hearing.

Attorneys—Chapman, Clarke & Turner, for petitioner; Lewis & Lewis, for respondent.

PROBATE. } TICHBORNE v. TICHBORNE.  
1870. } In the goods of DAME HENRIETTE  
Jan. 25. } FELICITÉ TICHBORNE.

*Administrator pendente lite acting under order of Court of Chancery—Interference of Court of Probate—20 & 21 Vict. c. 77. s. 70.*

*An administrator pendente lite, acting under an order of the Court of Chancery, which directed the personal estate of the intestate to be applied in payment of her debts and funeral expenses in a due course of administration, advertised for sale the unrealised portions of the estate, consisting chiefly of personal ornaments and family relics. The estate, exclusive of such articles and things, was insufficient to meet the debts proved and claimed, but the plaintiff, in order to prevent the sale, was willing to deposit in the Registry a sum sufficient to cover the deficiency:—The Court, though deeming the offer of the plaintiff a reasonable one, declined to restrain the administrator from proceeding with the sale, and intimated that as a rule it would not interfere with an administrator acting under an order of the Court of Chancery.*

This was an administration suit in which the plaintiff and defendant contested the

right to a grant of administration to the personal estate and effects of Dame Henriette Felicité Tichborne, deceased.

In a suit pending between the same parties in the Court of Chancery, Mr. Richard Humphreys was appointed receiver of the personal estate of the deceased, and on the 29th of June, 1869, he was also appointed administrator *pendente lite* by the Court of Probate (*vide* 38 Law J. Rep. (N.S.) Prob. & M. 55, 70). An administration suit was subsequently instituted in the Court of Chancery, and in such suit Stuart, V.C., on the 26th of July, 1869, made an order directing the usual accounts to be taken, and "that the intestate's personal estate be applied in payment of her debts and funeral expenses in a due course of administration." It was found, on the account being taken, that the debts of the deceased amounted to 1,255*l.* 17*s.* 10*d.*, and the assets, exclusive of certain plate, jewellery, linen and books, to 1,034*l.* 3*s.* 7*d.* The assets being insufficient to meet the claims against the estate, the administrator, with the sanction of the chief clerk of the Vice Chancellor, to whom the matter had been referred, advertised a sale of the plate, &c., above mentioned, being the unrealised portions of the estate.

*Dr. Tristram*, for the plaintiff, now moved the Court to restrain the administrator *pendente lite*, from proceeding with the sale until further order. It was true he was clothed with the general powers of an administrator, but he was subject to the immediate control of the Court, and should act under its directions (20 & 21 Vict. c. 77. s. 70). The articles advertised for sale were personal ornaments and family relics, and the plaintiff was willing to deposit in the Registry the sum of 300*l.* to meet the alleged deficiency in the assets.

*The Solicitor General (Sir J. D. Coleridge) (Bayford with him)*, for the administrator, opposed the motion. To grant it would bring the Court into conflict with the Court of Chancery. Further, the estate was insolvent and the sooner it was realised the better.

*Bridge*, for the creditors, also opposed the motion.

*Dr. Tristram*, in reply.—The plaintiff cannot interfere in the administration suit

in the Court of Chancery. He is therefore compelled to apply to the Court of Probate to exercise its powers in controlling the administrator *pendente lite*.

LORD PENZANCE.—There is no doubt that the Court can control the proceedings of an administrator *pendente lite*. But in this particular case it happens that the relations of the deceased are squabbling as to who is entitled to the administration, that the creditors of the deceased are meanwhile unpaid, that an administration suit has been in consequence instituted in the Court of Chancery, and that it is in obedience to an order made in that suit that the administrator is now acting. I do not think, under those circumstances, that it would be right I should interfere with him. On the other hand, I think the proposal made by the plaintiff is a very reasonable one, and I cannot imagine that the forms of the Court of Chancery will prevent him from applying to it, and having the sale prevented. But in matters of this kind it is important that I should adhere to some principle, and that principle I think should be this—not to interfere with the administrator when there is an administration suit pending in the Court of Chancery, and when the administrator is acting under an order made by the Court of Chancery in such suit. I must therefore refuse this application.

*Motion rejected with costs of administrator, but not costs of creditors.*

Attorneys—Walter & Moojen, for plaintiff; Dobinson & Geare for administrator.

MATRIMONIAL }  
1870.  
Feb. 1.

TAYLOR v. TAYLOR AND  
WOLTERS.

*Dissolution of Marriage—Practice—Application of Damages.*

*In a suit by a husband for dissolution of marriage, the Court refused to order any part of the damages assessed to be settled on the wife, but directed them to be applied, first, to the payment of such part of the petitioner's costs as he should not recover*

*from the co-respondent, and subject thereto, to be settled upon the issue of the marriage.*

This was a petition by a husband for dissolution of marriage, claiming damages. The damages had been assessed by a jury at 150*l.*, and a decree *nisi* had been pronounced, the co-respondent being condemned in costs.

*Inderwick* now moved the Court to make the decree absolute, and to order that the damages should be applied to the payment of such of the petitioner's costs as should not be recovered from the co-respondent.

*Cunningham*, for the respondent, asked the Court to order that the damages should be settled upon the respondent and a child, the only issue of the marriage. A legacy of 100*l.*, which had been left to the wife, had been applied in purchasing furniture, which was now in the possession of the petitioner. He cited *Keats v. Keats* (1), *Latham v. Latham* (2), *Narracott v. Narracott* (3). He also asked the Court to order that the respondent should have the custody of the child.

LORD PENZANCE.—Each case must depend on its own circumstances. The Court has to deal with the sum of 150*l.* awarded as damages. The first duty of the Court is to see that the petitioner gets his costs. That sum will therefore be first applied to the payment of the petitioner's costs, as between attorney and client, or at least so much of them as he fails to obtain from the co-respondent. With regard to the remainder, which may amount to 100*l.*, all that the Court can do is to order it to be settled upon the child. The wife has no claim to any part of the damages. As to the money the wife brought into the common stock, the Court cannot travel back into that matter. The husband must have the custody of the child, the respondent being allowed to see it once a month.

Attorneys—J. McDiarmid, for petitioner; T. N. Lade, for respondent.

(1) 28 Law J. Rep. (N.S.) Prob. & M. 57.

(2) 30 Law J. Rep. (N.S.) Prob. & M. 163.

(3) 33 Law J. Rep. (N.S.) Prob. & M. 132.

PROBATE. }  
1870. }  
Feb. 8. }

*In the goods of DUGGINS.*

*Will—Attestation—Name of Witness written by another—1 Vict. c. 26.*

*An attesting witness must himself subscribe the will.*

*It is not essential that a witness should sign his own name, provided it is clear that his subscription is intended as an act of attestation.*

*The name of A., an attesting witness to a will, was at his request subscribed by B., who was present at the execution:—Held, that as A. had not subscribed, and B.'s subscription was not intended as an act of attestation, the will was not duly executed.*

Edward Duggins died in 1867. On the 20th of October, 1860, he made a will and signed it in the presence of William Williams and William Edwards, whose names appeared on the will as attesting witnesses. W. Williams duly subscribed the will, but the name of W. Edwards was, at his request, written by his wife, Susannah Edwards, who was present at the execution of the will.

Charles moved the Court for probate. Under the circumstances the subscription of the name of W. Edwards by his wife, may be taken as his subscription.

[LORD PENZANCE.—*In the goods of Cope* (1) is an authority directly in point against you. The only distinction between that and the present case is that in the former the name of the attesting witness was written by another person, at the request of the testatrix, whilst in this case it was written at the request of the witness.]

Then it is submitted that Susannah Edwards may be considered an attesting and subscribing witness. It is not necessary that a witness should sign his own name, provided he signs with the intention of attesting the will—*In the goods of Oliver* (2). The case of *Pryor v. Pryor* (3) is at first sight against this contention, but it is distinguishable from the present case by

the fact that there the person whose name was signed was not present at the time.

LORD PENZANCE.—I think that this application cannot be granted. The will is signed by the testator, in the presence of two witnesses, and so far the statute no doubt is satisfied. But the statute also requires that the witnesses shall attest and subscribe the will. One of the attesting witnesses, William Williams, did so attest and subscribe the will, but Edwards did not subscribe—he did not write his name, nor put his mark on the will, nor did he in fact touch it. Upon the authority of the case I have quoted, I am of opinion that some other person writing the name of a witness is not sufficient to satisfy the words of the statute. The same section, which provides that a testator shall subscribe the will at the foot or end thereof, goes on to say that it shall be done by the testator or by some other person in his presence and by his direction. Provision is made for some one else writing the name of the testator, but no such provision is made with regard to the attesting witnesses. I think, therefore, the will has not been attested by William Edwards. Then it is suggested that the attesting witness is not William Edwards, but Susannah Edwards. To make that out it would be necessary to shew that the signature of William Edwards was either the signature of Mrs. Edwards, or that, if it were not, she subscribed it as her signature, with the intention of attesting the will. There have been cases in which a witness has inadvertently signed the name of another person instead of his own, and the will has been held to have been duly subscribed. In such cases, when the Court is satisfied that this has been done inadvertently, it would not be right to hold that the witness had failed to attest the will. But that is very different from holding that a person, who never intended to sign the will as an attesting witness, did so because she has written the name of another person. I am bound, therefore, to reject this application.

Attorneys—Johnson & Weatheralls, agents for W. P. Williams, Newport.

(1) 2 Robert. 335.

(2) 2 Spinks 57.

(3) 29 Law J. Rep. (N.S.) Prob. & M. 114.

PROBATE. }  
 1870. } *In the goods of JOHN SAVAGE.*  
 Feb. 15. }

*Probate—Codicil—Will not forthcoming*  
 —1 Vict. c. 26. s. 20.

*The testator made a codicil to his will and gave it to his son to keep. On his death the will was not forthcoming:—Held, that the codicil not having been revoked by any of the modes indicated in the statute, it was entitled to be admitted to proof.*

*Black v. Jobling (1) affirmed.*

John Savage, late of Beaufort Buildings, Bath, in the county of Somerset, gentleman, deceased, died on the 9th of January, 1870. There was reason to believe that he had made a will, but the only executed testamentary paper found after his death was a codicil, which ran as follows:—

“This is a codicil to my will. After the death of my dear wife, save and except the Colly estate, containing 800 acres more or less, I give all the land I have in the parish of Tetbury to my son William absolutely, and I also give to my son William the Vale of Neath Debenture Stock, value 1,000*l.*, to cover the bond I have given to Robert Holdsworth and Francis Savage, my son, as trustees of his marriage settlement, for securing the sum of 600*l.* and interest. Witness my hand this 2nd day of August, 1869, at Mappowder, Dorsetshire.”

It appeared from the affidavits that the testator was on a visit with his son, the Rev. William Savage, at Mappowder, in August, 1869, and that on or about the 2nd of that month he handed to his son an envelope, saying, “There, you keep it.” The envelope was opened on his death, and was found to contain the codicil. It further appeared that in December, 1869, he shewed his son, Francis Savage, a rough draft of a will which was found unexecuted among his papers, and that when asked by his son, “What have you done with the original will?” he replied, “To tell you the truth, I have burned it.”

*Pritchard* moved the Court to grant ad-

ministration, with the codicil annexed, to Francis Savage, one of the natural and lawful children, and one of the next of kin of the deceased.—The codicil not having been revoked in any of the modes indicated by the statute (1 Vict. c. 26. s. 20), is entitled to be admitted to proof—*Black v. Jobling (1)*.

LORD PENZANCE.—I think the grant ought to go. The question involved was raised in the case of *Black v. Jobling (1)*, in which the Court took the trouble to review the previous decisions in the matter. Before the statute (1 Vict. c. 26), the principle was that the codicil fell to the ground on the revocation of the will, but if the party could establish that the testator intended the codicil to stand by itself, notwithstanding the revocation of the will, the Court would then give effect to it. It will be recollected that at that time the Court used to go largely into the question as to what papers the testator intended to constitute his will. But then came the statute, and it in so many words enacted that “no will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid” (marriage), “or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.” Therefore, if after the statute it were to be held that a codicil was revoked by the mere fact that the will to which it was made a codicil was revoked, the Court would be going in the teeth of the clear language of the Act; and consequently, if this were the first case that had arisen since the passing of the Act, I should have no doubt that the statute governed it, and that the codicil being left unrevoked by any of the modes indicated in the statute, it should be admitted to proof. There has, however, been a decision on the point; but in *Black v. Jobling (1)*, I pointed out that that decision was hardly satisfactory. There are two cases on the subject decided by Sir Herbert Jenner Fust. The first

(1) 38 Law J. Rep. (N.S.) Prob. & M. 74; s. c. Law Rep. 1 P. & D. 685.

NEW SERIES, 39.—PROB. AND MAT.

is *In the goods of Halliwell* (2). In that case the Court did not seem to have had its attention called to the words of the statute, and upheld the codicil on the ground that it was the only substantive testamentary paper of the deceased. The next was the case of *Clogstoun v. Walcott* (3), and there the language of the judge was as follows:—"Nothing can be clearer than that, when the deceased destroyed the will, he expected that the destruction would have no effect upon the codicils. . . . Under the old law, the effect of destroying a will was, by presumption, to defeat the operation of the codicils to that will; but by the present law there must be an intention to destroy." The statute does not say anything about an intention to destroy. The statute says that the codicil shall not be destroyed other than by one of the several modes which it specifies. When the matter came before Sir Cresswell Cresswell in *Grimwood v. Cosens* (4), these cases were cited, and the Court said, "I think it has been established by the cases cited at the bar, that previous to the passing of 1 Vict. c. 26, a codicil was *prima facie* dependent on the will, and that the destruction of the latter was an implied revocation of the former; and, moreover, that Sir H. J. Fust was of opinion that no alteration of this principle was made by the passing of the statute." That certainly is not what Sir Herbert Jenner Fust said. He said there was an alteration and that it consisted in this, that the statute made it necessary there should be an intention to destroy. That was the way in which the case was handled in *Grimwood v. Cosens* (4), and it seemed to me, therefore, that the matter had not been properly considered. I said as much in *Black v. Jobling* (1), but upon looking at that case again I thought that perhaps the matter had not been made sufficiently clear as to what the intention of the Court was. The result is that, in my judgment, the words of the statute are imperative; and those decisions to which I have referred do not appear to me to have proceeded on any consideration of the statute, or any argument as to how the imperative words

of the statute could be got rid of. I think that in this case, the testator having left behind him a paper properly executed as a testamentary paper, that paper, no doubt, being in the form of a codicil, it still must stand, unless he has revoked it in some of the modes indicated by the statute. If the testator destroyed his will, and left the codicil still standing, the natural inference is that he intended it to remain. I do not, however, proceed on his intention. I proceed on the words of the statute, which says that a will or codicil shall be revoked only in a certain manner, and as this codicil has not been revoked in either of the modes specified, I think it is entitled to be admitted to proof.

*Grant as prayed accordingly.*

Proctor—G. R. Longden.

PROBATE.  
1870.  
Feb. 1.

*In the goods of BULLAR.*

*Administration — Practice — Grant to Attorney.*

*When the person entitled to administration is in England, a grant will not be made to his attorney unless the estate consists solely of property held in trust.*

H. Bullar died in 1869, leaving a will whereby he appointed his four sisters universal legatees. The executor named in the will was dead.

The deceased at the time of his death was a trustee in a great many cases. He left property other than that held in trust.

*The Solicitor General* (Sir J. D. Coleridge), on behalf of the legatees, moved for a grant of administration with the will annexed to a Mr. Murray as their attorney.

[LORD PENZANCE.—It is contrary to the practice of the Court to make a grant to an attorney where the persons entitled to the grant are in this country.]

It would be impossible for ladies to act in the trusts which would devolve on them if they were to take the grant. Mr. Murray is willing to act if the grant is made to him.

(2) 4 Notes of Cas. 400.  
(3) 5 Notes of Cas. 623.  
(4) 2 Sw. & Tr. 364.

**LORD PENZANCE.**—It would be contrary to the practice of the Court to grant this application. There are four persons, each of whom is entitled to the grant, who say we will none of us take it, but ask the Court to make it to a person who has no interest. The Court has occasionally made such a grant where there has been only a trust, but it would be contrary to the practice to grant the present application. There can be no objection to your clients taking the grant, and then appointing Mr. Murray to act as their attorney. I reject the application.

*Application rejected.*

Proctors—Brooks and Dubois.

PROBATE. }  
1870. } *In the goods of WILLIAM HICKS.*  
Feb. 15. }

*Will—Estate left unadministered by Executor—Grant de bonis non (with will annexed) to Administrator of Executor—Parties entitled in priority abroad.*

*A died, having appointed B executor of his will. B proved the will, and died leaving part of the estate unadministered. The Court made a grant de bonis non (with the will annexed) to the administrator of B, the parties entitled in priority being abroad and difficult to be found; but required that security should be given to the amount of their share of the property.*

William Hicks, late of Shere, in the county of Surrey, gentleman, deceased, by his will, dated February 12th, 1842, gave and bequeathed all his estate and effects unto and equally between his brother, Robert Hicks, and his sister, Mary Anne, the wife of William Ewen, share and share alike; and he nominated his said brother and sister executor and executrix of his will.

The testator died February 8th, 1854, a bachelor without a parent living, leaving Robert Hicks, his natural and lawful brother and only next of kin, and Catherine Ewen and Frances Anne Ewen, the daughters of his sister, Mary Anne Ewen,

who predeceased him, his lawful nieces, and the only persons entitled in distribution with Robert Hicks in the event of an intestacy.

Probate of the will was granted on the 12th of May, 1854, by the Prerogative Court of Canterbury to Robert Hicks, the surviving executor. Robert Hicks died in January, 1864, a widower and intestate, leaving part of the estate of his testator unadministered; and on December 20th, 1869, letters of administration of his personal estate and effects were granted by the Principal Registry to Robert Hicks the younger, one of his natural and lawful children and one of his next of kin. Catherine Ewen and Frances Anne Ewen were married and resident abroad—the one in South America, the other in the United States of America. They had not been heard of for some time, and there was reason to suppose that they were dead.

O. A. Middleton moved the Court to decree letters of administration (with the will annexed) of the personal estate and effects of William Hicks left unadministered to Robert Hicks, the administrator of his executor. He referred to *Savage v. Blythe* (1).

**LORD PENZANCE.**—I think the application ought to be granted. The person who seeks the grant represents three-fourths of the estate, and there is also an obvious convenience in the grant *de bonis non* going to the administrator of the person who has proved the will, but who has left the estate unadministered. Upon the whole circumstances of the case, taking into consideration that the persons having the priority are abroad and difficult to be found, perhaps dead, the Court, I think, ought to make the grant as prayed; but security must be given for one-fourth of the property.

*Grant accordingly.*

Attorney—Smallpeice.

(1) 2 Hag. Appendix, 150.

MATRIMONIAL.	}	KELLY v. KELLY.*
1870.		
Jan. 19, 20, 21;		
Feb. 9.		

*Judicial Separation—Undue Exercise of Marital Authority—Moral Cruelty.*

*If force, whether physical or moral, is systematically exerted to compel the submission of the wife in such a manner, to such a degree, and during such length of time, as to break down her health and render serious malady imminent, the interference of the law cannot be justly withheld by any Court which affects to have charge of the wife's personal safety.*

*Per Channell, B. (with the concurrence of Hannen, J.)—affirming the proposition as above laid down by the Judge Ordinary—The object of the Matrimonial Court in exercising its jurisdiction in decreeing judicial separation for cruelty, is to free the injured consort from a cohabitation which has been rendered, or which there is imminent reason to believe will be rendered, unsafe by the ill-usage of the party complained of. It is obvious that the modes by which one of two married persons may make the life or the health of the other insecure are infinitely various, but as often as perverse ingenuity may invent a new manner of producing the result, the Court must supply the remedy by separating the parties. The most frequent form of ill-usage which amounts to cruelty is that of personal violence; but the Courts have never limited their jurisdiction to such cases alone. And a wife does not lose her title to the protection of the Court merely because she has proved unable to bear with perfect patience and with un-failing propriety of conduct the ill-usage of her husband.*

In this case a decree of judicial separation on the ground of cruelty to the wife was pronounced by the Judge Ordinary on December 7, 1869 (*ante*, p. 9). The respondent appealed against the decision, and the case was argued by him before the full Court on the 19th, 20th and 21st of January.

\* Before the full Court: Lord Penzance (Judge Ordinary), Channell, B., and Hannen, J.

*Dr. Deane and Inderwick* appeared for the petitioner, but were not called on.

On the 9th of February judgment was delivered as follows:—

CHANNELL, B.—This is an appeal to the full Court from a decision of the Judge Ordinary. Lord Penzance is desirous that my brother Hannen and myself should first state our views. I proceed therefore to deliver our joint opinion.

The appeal is by the Rev. James Kelly against a decree whereby the Judge Ordinary, on the petition of the appellant's wife, Frances Kelly, decreed in favour of the petitioner for a judicial separation from her husband on the ground of cruelty. Mr. and Mrs. Kelly were married in Ireland in the year 1841. There was issue of the marriage—a child, deceased, and a son, now living, who was born in 1845. With the exception of a visit made by Mrs. Kelly to Wales and Ireland (to which visit we propose hereafter to refer), Mrs. Kelly lived under the same roof with Mr. Kelly from the time of the marriage until January, 1869. Since that time Mr. and Mrs. Kelly have ceased to cohabit, Mrs. Kelly having left her husband's home and claimed from this Court the decree for judicial separation now appealed against. There is some evidence that on one or two occasions Mr. Kelly laid hands on Mrs. Kelly against her consent. But the evidence is so slight on this head that we think it safer to treat the case (as it was considered by the Judge Ordinary) as one in which there is an absence of any proof of such physical violence towards the wife on the part of the husband, as could justify a decree. The question then arises whether the decree is erroneous in holding that although there was not such actual physical violence on the part of the husband towards the wife, there is shewn to be that cruelty which will entitle her to ask this Court for a decree for judicial separation.

The appellant seeks the reversal of the decree on two grounds; first, that the Judge Ordinary has erred in point of law in the definition which he has given of cruelty, and secondly, that the evidence does not establish that the appellant has



been guilty of legal cruelty. The passages in the judgment of the Judge Ordinary, in which he has laid down the principles upon which his decision is based, are the following:—

"The peculiar and distinguishing feature of this case is the adoption by the respondent of a deliberate system of conduct towards his wife, with the view of bending her to his authority . . . .

"If force, whether physical or moral, is systematically exerted for this purpose in such a manner, to such a degree, and during such a length of time as to break down her health and render serious malady imminent, the interference of the law cannot be justly withheld by any Court which affects to have charge of the wife's personal safety." "Moreover," says his Lordship, "the decisions have imported this further proposition as a condition of the Court's interference, that the troubles of the wife are not owing to her own misconduct."

We are of opinion that the above cited passages contain an accurate and, so far as was necessary for the determination of the case, a complete statement of the law on the subject. It would be difficult to frame a definition of legal cruelty, which should be applicable to all the cases which may arise. The object of the Matrimonial Court in exercising its jurisdiction in decreeing judicial separation for cruelty is to free the injured consort from a cohabitation which has been rendered, or which there is imminent reason to believe will be rendered, unsafe by the ill-usage of the party complained of. It is obvious that the modes by which one of two married persons may make the life or the health of the other insecure are infinitely various, but as often as perverse ingenuity may invent a new manner of producing the result, the Court must supply the remedy by separating the parties. The most frequent form of ill-usage which amounts to cruelty is that of personal violence; but the Courts have never limited their jurisdiction to such cases alone, as will be clearly seen by reference to some of the authorities which we proceed to cite.

In giving his judgment in the case of

*Curtis v. Curtis* (1) the late Judge Ordinary, Sir Cresswell Cresswell, quoted largely from the decision of Lord Stowell in *Evans v. Evans* (2). *Evans v. Evans* was a case in which the wife, complaining of some trifling acts of violence committed by the husband, mainly relied on an apprehension of such violence if cohabitation continued as would render that cohabitation unsafe. His Lordship, however, considered the question with reference to the effect of the husband's treatment on the health of the wife, and he used the following language, afterwards adopted by Sir Cresswell Cresswell in *Curtis v. Curtis* (1):—

"Proof must be given of a reasonable apprehension of bodily hurt. I say an apprehension, because assuredly the Court is not to wait till the hurt is actually done, but the apprehension must be reasonable, not arising merely from diseased sensibility of mind." So in *Harris v. Harris* (3), "There must be something that renders cohabitation unsafe, or is likely to be attended with injury to the person or to the health of the party." Again, in *Waring v. Waring* (4), "The usual principles require that such complaints should be supported by proofs of violence and ill-treatment endangering, or at least threatening, the life, or person, or health of the complainant." In *Holden v. Holden* (5) it is laid down that it is not necessary that the conduct of the wife should be entirely without blame, for the reason which would justify the imputation of blame to the wife would not justify the ferocity of the husband.

We think that the judgment appealed against is in conformity with the law as previously laid down, and we now proceed to consider whether the facts proved in evidence establish that the appellant was guilty of cruelty in the sense attributed to that word in the authorities referred to.

After a very anxious and careful consideration of the evidence, we are satisfied

(1) Sw. & Tr. 192; s. c. 27 Law J. Rep. (N.S.) Prob. & M. 73.

(2) 1 Consis. Reps. 37.

(3) 2 Consis. Reps. 148.

(4) Ibid. 153.

(5) 1 Consis. Reps. 453.

that the acts imputed to Mr. Kelly, as stated in the judgment of the Judge Ordinary, are established. What are those acts? First, as to Mr. Kelly's conduct before his wife left his roof for Wales and for Ireland. As to those acts we quote the language of the Judge Ordinary, in which we entirely concur, and which we consequently adopt. It is unnecessary to quote the evidence in support of this enumeration, it is sufficient to say that, in our opinion, every sentence we quote is warranted by satisfactory proof:—

"He opened her letters. He called her a vile traitor and apostate. He told her that no modest woman would associate with her. That she had given her confidence to another man. He refused to sit at meals with her; he insisted on occupying a separate bedroom; he told the servants to take orders from him, and not from his wife. He kept apart from his wife all day." We purposely omit the statement that he desired her not to attend the administration of the sacrament as we accept Mr. Kelly's explanation on this point, that what he did was not in the exercise of any authority over his wife, but only by way of advice. Mrs. Kelly left home on or about the 29th of June, 1868. She travelled with her relations in Wales, and afterwards paid a visit to other relations in Ireland, and she was away for nearly four months. She left home without her husband's consent (to this circumstance we shall afterwards advert), and she returned in October, 1868. What was Mr. Kelly's conduct to her on her return? Again we quote the language of the Judge Ordinary, whose view of the evidence we entirely adopt:—

"Mrs. Kelly was purposely subjected to the following treatment: She was entirely deposed from her natural position as mistress of her husband's house. She was debarred the use of money entirely. Not only were the household expenses withdrawn from her control, but she was not permitted to disburse anything for her own necessary expenses; every article of dress, every trifle that she required had to be put down on paper, and her husband provided it if he thought proper.

"Having on one occasion of going into

town, declined to tell her husband on her return every house to which she had been, an interdict was placed on her going out at all. At one time the doors were locked to keep her in; at another a man-servant was deputed to follow her; at another the respondent insisted on accompanying her himself whenever she wanted to go abroad.

"On these occasions he appears to have occupied the short time they were together in what he called putting her sin before her in strong, coarse, and abusive terms, applying to her the same epithets and language as would be applicable to a woman who had been guilty of adultery. He took no meals with her; he occupied a separate bedroom; he passed no portion of the day, however small, in her society. They met, as before, only at family prayers, and if he spoke to her at all, it was only to give some directions, or to reproach her. Save on one or two occasions she saw no one. Those whom she desired to see were forbidden the house. She was absolutely prohibited from writing any letters, unless her husband saw them before they were posted. She was thus, so far as the appellant could achieve it, practically isolated from her friends. Meanwhile, the care of the household was confided to a woman, hired for the purpose, who was directed not to obey Mrs. Kelly's orders without the respondent's directions. In short, she was treated like a child or a lunatic, and in this light she was actually regarded by the woman just mentioned, when she first came to the place; and this, be it remembered, although she had passed the mature age of sixty, and had been married to the respondent for seven and twenty years."

What was the effect of this treatment on Mrs. Kelly's health? My brother Hannen and myself are quite satisfied upon the medical evidence, and upon the evidence of Mrs. Kelly herself, that the treatment she experienced from Mr. Kelly before she left for Wales, had such an effect upon her health as to cause change of air and scene, and absence from her husband to be necessary, and that from the treatment she suffered after her return from Ireland, her health was so broken down, that to continue subject to the same

treatment for any length of time would not only have seriously imperilled her health, but would have exposed her to the highly probable consequence mentioned by the medical men, viz. paralysis or madness. It was, if we may say so, well observed by the Judge Ordinary that the state of Mrs. Kelly's health, her actual condition and danger were not denied by the appellant. He contented himself with ascribing it to vexation at the discovery of what he called her own treachery, and not to his treatment of her, thus differing the cause, but not controverting the fact. Mr. Kelly has strenuously contended on the hearing of his appeal, that the wife's conduct has been such as to explain away what otherwise might appear to be cruelty on his part, and to lead fairly to the view that her conduct on various occasions justified him in the exercise of his marital rights, in acting towards her as he has done. It will be right, therefore, to review the acts of Mrs. Kelly, and to see how far they give the appellant the excuse or justification he sets up. One circumstance much relied on occurred as long ago as the year 1850. It would appear from letters of Mrs. Kelly, put in evidence by Mr. Kelly, that she had, under the influence of jealousy, suspected Mr. Kelly of improper connection with a lady, a resident under the same roof. Of this suspicion she appears to have been relieved by Mr. Kelly's own statement. Her language is, "When you put the case before me in plain words, I shrank from the thought of such a suspicion of either of you."

Mrs. Kelly was assured of her husband's forgiveness, but in effect told that she had lost his confidence for ever. In the endeavour to regain it, and sorrowing for having entertained a groundless suspicion, she retracted the charge and expressed the utmost contrition and remorse at having made it. We think that this correspondence does not tend to support the appellant's case. So far as it throws light on the characters of the parties, it proves that Mrs. Kelly, satisfied by her husband's assurance that she had done him injustice, did all she could to shew her penitence and regain his affection and confidence,

while it shews, on the other hand, that Mr. Kelly was severe and slow to forgive. Whether he ever did restore her to his confidence can only be inferred from the events out of which the present suit has arisen, but it may be concluded from the manner in which the appellant has preserved and used this correspondence, twenty years after its date, that nothing has occurred in the intervening period on which he can found an accusation against her. The appellant has enumerated twenty-five overt acts (as he terms them) of his wife, on which he relies as justifying his conduct towards her. We do not propose to examine them all in detail; some of them are entirely unfounded, others are too trivial to require notice, and others, indeed, the greater number, cannot serve as a justification of the appellant's conduct, for they were the consequences of it. It may well be that Mrs. Kelly, smarting under the harsh treatment which her husband inflicted on her, did not at all times preserve her temper, and she may on some occasions have done things which we should condemn, and she would herself regret; but a wife does not lose her title to the protection of this Court merely because she has proved unable to bear, with perfect patience, and with unflinching propriety of conduct, the illusage of her husband.

We now proceed to examine such of the charges against Mrs. Kelly, as appear to us to call for notice. The first is, that she abetted her son in prematurely and against his father's wishes leaving the paternal roof; the second, that she encouraged her son in disobedience to his father. The son of the appellant, a young man over twenty-one, had become dissatisfied with his position at home, and desired to earn a livelihood by undertaking the duties of a tutor. It is no part of our task to determine whether he was justified in taking the steps he did, or whether they were such as deservedly to bring upon him the penalty of being cast off by his father as an "unnatural son," and excluded from the paternal roof. Mrs. Kelly does not appear to have abetted or encouraged him to act against his father's wishes, although, no doubt, she

played the part which usually belongs to the mother in such cases. She endeavoured to excuse the son to his father, and to make his conduct appear less blameworthy than his father considered it. The third charge is that she made excuses for her son having an immoral book in his possession. Of this there is no proof. The fourth charge is that she endeavoured in effect to make her husband a bankrupt. This accusation illustrates the spirit of exaggeration which pervades the whole of the appellant's charges against his wife. Mr. Kelly desired that a portion of his wife's money in settlement should be invested in a house. Mrs. Kelly at one time, at her husband's request, wrote a letter to her trustees, in which her assent to the investment was implied. She afterwards expressed her dissent, but upon being reminded of her previous letter, she ultimately withdrew her opposition, and the matter was carried out as Mr. Kelly wished. His mode of argument is this: "If she had persisted in her refusal, I should have been liable to be sued by the owner of the house for refusing to carry out an agreement I had entered into. I might have become liable to pay damages and costs which I should not have been able to pay, and in that case I should have been obliged to become bankrupt, therefore my wife is guilty of having endeavoured to bring about that result." There is not the slightest ground for imputing to the petitioner an intention in any way to injure her husband, much less to bring about so remote an event as his bankruptcy. She appears to have thought the investment an injudicious one and opposed it, but withdrew her opposition when it was pointed out to her that she had induced her husband to act on her previous implied assent. The fifth and sixth charges contain the gravamen of the appellant's accusation against his wife, and the facts upon which they are founded seem mainly to have given rise to the animosity which he has manifested towards her. They require therefore a somewhat fuller examination. These charges are as follows:—"5th. She deliberately and defiantly traversed my authority in keeping up a

correspondence with a repudiated connection of mine. 6th. She planned with that connection to test whether I had not committed a breach of trust, so that my own child might prosecute me." The dissension between the appellant and his son has already been referred to. On the occasion of a quarrel between them, the father used angry and abusive language to his son, who immediately wrote a letter to Colonel Thornbury, the husband of his father's sister, in which he gave his version of what had occurred, and asked his uncle's advice. Colonel Thornbury wrote in answer a letter, than which nothing could be more kind or judicious. He soothed the son's anger, endeavoured to restore a kindly feeling towards his father, by pointing out excuses for his ebullition of temper, and counselled in the most absolute terms, patience and submission on the part of the son to his father's will, and finished his letter with an invitation to his nephew to return with him to Switzerland after the termination of a visit which he, Colonel Thornbury, proposed in a short time to make to Mr. Kelly. Mr. Kelly unfortunately became acquainted with this correspondence by opening a pocket-book of his son's in which a copy of his letter and Colonel Thornbury's answer were contained. Mr. Kelly made copies of these letters and replaced the pocket-book where he found it. When Colonel Thornbury paid his promised visit, the appellant reproached him with having written as he had to his son, read to him the draft of a long letter such as he thought ought to have been written, and not succeeding in convincing Colonel Thornbury that he had done wrong, he finally informed him, that if he did not see his failure of duty to him in writing as he had to his son, all intercourse between their respective families must be severed. This decision the appellant communicated to his wife. It is clear that while Colonel Thornbury was at Liverpool, Mrs. Kelly informed him that she had recently learned from her husband that a sum of 5,500*l.*, which had been left to her by her sister some years before, had been invested by him in

securities which had proved almost worthless. Desiring to know what her own and her son's legal interest in this legacy was, Mrs. Kelly wrote the following letter to Colonel Thornbury :—

“The Elms,

“Wednesday, February 5th.

“My dear Friend,—It has occurred to me, that if you have leisure and would take the trouble of going to Doctors' Commons and paying 1s. (12 stamps enclosed), you could see my sister's will. She died in /56. I think I should like to know if I am right in my recollections of its purport. But if you are busy, never mind it. I saw Clara to day; she told me to tell you that Mr. Kelly has written to say there is a vacancy in a merchant's office which he will keep open for Bruce for a few days, terms as usual, 100*l.* for five years. This would be better than letting him return to Zurich, as he could throw it up if anything better offered. Ned bids me say his father has refused his consent to his going; in fact he had, before Ned's communication, been applied to and put no obstacle in the way. I grieve to say matters are no better. Though I wish Fred had taken the Doctor's advice, and tried at least to make concessions, but I cannot prevail on him, and so the die is cast. I can only look up for support in this time of deep distress. It will be a great comfort to poor dear Clara if Bruce remains. I have only a moment to add that you must not think of taking up your time with our affairs unless you have full leisure.

“Yours affectionately,

“Frances Kelly.”

Unfortunately Mr. Kelly became acquainted with this correspondence also, by opening with a key of his own which happened to fit a drawer in which his wife had locked the letter up. He copied it, as he says, for consideration and restored it to its place in her drawer. It is upon this correspondence that the appellant bases his charge against his wife of “treachery,” of “conspiring” with her “wicked accomplice” Thornbury to prove her husband guilty of a “heartless breach of trust, so that his own child might prosecute him.”

This accusation is repeated in a variety  
NEW SERIES, 39.—PROB. AND M.

of ways, in a series of voluminous letters, written and read by the appellant to his wife. In vain has Mrs. Kelly repudiated the charge of harbouring suspicion that her husband had done anything morally wrong, or of having intended to cause her son to take proceedings against him.

But the appellant has remained inexorable; and, from the time of his discovery of this correspondence with Colonel Thornbury, commenced and persisted in the series of acts, which cannot be properly designated by any milder term than persecution, and which ultimately led to the institution of the present proceedings. It is difficult to conceive what end the appellant purposed to bring about. It seems that nothing would satisfy him, unless his wife would acknowledge the justice of all the terms of opprobrium which he had heaped upon her. Whether even the most abject confession of guilt, in the sense in which he imputed it, would have mitigated his resentment, may well be doubted.

Mrs. Kelly, however, persisted in denying that she had intended any treachery to her husband, and refused to acknowledge that she had intended any wrong against him. We think that she was justified in this refusal. It was natural that a woman should think that money which had been left to her sole and absolute use was in some way subject to her control, and that she should desire to ascertain her right with reference to it, with a view of saving what remained from the imprudence of her husband. It was necessary, for this purpose, that she should invoke the assistance of some one; and, having regard to the origin and circumstances of her husband's quarrel with Colonel Thornbury, we cannot look upon her appealing to that gentleman—her husband's brother-in-law—rather than to a stranger or an attorney, as deserving of severe reprehension, certainly not as justifying the appellant's subsequent conduct. Mrs. Kelly states that she believed she had received the sanction of a clergyman, a friend of her husband, to the course she adopted in writing to Colonel Thornbury; and although that clergyman afterwards explained that he had not intended to convey such an idea to Mrs. Kelly's mind, we see nothing in

F

the circumstances to make us doubt Mrs. Kelly's statement.

The 7th charge is thus expressed, "She was a party to the imputation of a fraudulent design to me by her brother." This is wholly unfounded. Mrs. Kelly did not, directly or indirectly, impute a fraudulent design to her husband: she was merely the recipient of a letter from her brother, in which he expressed a fear that the appellant might raise money by mortgaging the house which he had resolved on purchasing out of his wife's trust estate, against her wishes. It does not appear that Colonel Minchin meant that Mr. Kelly would do so fraudulently; but even if he had, Mrs. Kelly was no party to the imputation by the mere receipt of her brother's letter.

The 8th charge is, that after her son left home she burnt the letters she received from him, to prevent the appellant seeing them. Mrs. Kelly states that she did this to prevent further irritation between the father and son, which the letters might have produced, and this appears to us a reasonable and sufficient answer. The 9th charge is, that she defiantly, before the servants, withheld from the appellant a silver spoon. This is one of those instances to which we have referred, in which Mrs. Kelly appears to have acted in a manner which cannot be justified, though it may be excused, and the matter is of so trivial a nature, that we enter into the details with repugnance. After the appellant's son had been refused permission to enter his father's house, Mrs. Kelly had in her charge a spoon which belonged to her son. The appellant sent a servant for it. Mrs. Kelly refused to give it up, on the ground that it was her son's. The appellant then endeavoured to break into his wife's bedroom, to take the spoon from her, and, in so doing, cracked the panel of the door. Mrs. Kelly seems to have felt she could not with propriety persist in her refusal, and the spoon was given up. The violence of the appellant deserves to be condemned with at least as much severity as the petulance of his wife.

We now arrive at the last of the charges to which we propose to refer—10th. "When her health required her to have change of air and scene, she refused to have the same with me, and, instead, clan-

destinely decamped, remaining away nearly six months." We have already stated our opinion that the appellant, by his treatment of the petitioner, had so injured her health that her life or reason would have been endangered by her continuing with him. Dr. Drysdale advised that change of air and scene were essential. On the 11th of June the appellant gave his consent to Mrs. Kelly leaving home. On the following day he wrote, "I entirely retract the consent given to you last evening, to your going away from your husband's protection and control." To this the petitioner replied, "I do entreat you to abide by your decision of last night, and let me go for a little while. If my nerves were strengthened I would return and be able to bear what at present I feel I cannot, of living as I now do, speaking to no one. The result will, I am satisfied, be that I shall go out of my mind. Do let me go for a little, I beg of you." The appellant, in answer to this appeal, absolutely refused to allow her to leave home unless with him. The following are the terms in which he conveyed his determination:—"As regards change of air, it is possible you may have it, but it must be with your husband if I can secure a suitable place. Meanwhile (that is, while we are exposed to the observation possibly of strange servants), to avoid scandal, I will force myself to sit at table with you, traitorous and unnatural as your conduct has been towards me." The petitioner shortly afterwards left home and went to her relations, with whom she travelled in Wales and Ireland, and after an absence of four months, during which a correspondence was maintained between her and her husband, violent and abusive on his side, conciliatory on hers, she returned home in improved health, soon to be again the victim of a repetition and aggravation of the treatment she had previously experienced.

We think that in leaving her home, the petitioner was influenced solely by a well-founded belief that if she did not do so her life or reason would be imperilled, and we therefore hold that it was justifiable.

We deem it unnecessary to follow the appellant through the remainder of his charges against his wife. We have exam-

ined them all with attention, and in almost every instance the answers to them which Mrs. Kelly has given, in her letters to the appellant and in her evidence, appear to us satisfactory, and in those few cases in which her conduct may not be entirely free from blame, the observation that we have already made is applicable, that her acts were the consequence and not the cause of her husband's ill-treatment, and whether taken separately or collectively afford no justification for it.

In conclusion, we have no doubt whatever that the law was correctly laid down in the hearing of this case; that the evidence warranted the conclusion of legal cruelty drawn from it, and assured as we are of the extreme peril to which Mrs. Kelly's health was exposed, without any adequate fault of her own, we think that the interference of this Court was justified and necessary, and that the appeal should be dismissed.

**LORD PENZANCE.**—On the legal principles involved in this case I have nothing to add to or withdraw from the expressions used in the judgment under appeal. I forbear to cite cases. In my judgment the principles of every case in which the Court has decreed separation on account of cruelty apply to this case. But as conclusions wide of the truth, and much broader than the judgment warrants, have been sought in argument to be drawn from the words there used, I would add something by way of fuller and further expression.

In determining whether a case is made out for the intervention of the Court, reliance is not to be placed on any one feature of the case to the exclusion of the rest. It is not to be said, from anything which the Court has here decided, that this or that is denied to the husband or permitted to the wife. The health and safety of the wife is no doubt the leading consideration. Still it is necessary that due regard should be had, not only to the degree in which that safety or health appears to have been compromised or placed in jeopardy, but to the clearness with which this fact is established in evidence. So, again, it is necessary that the acts of the husband by which the wife's health or safety is said to have

been thus threatened should not only be proved, and the alleged consequences plainly deduced from them, but their motives examined and their causes considered. And, finally, the conduct of the wife herself, by way of provocation, must not only be taken into the account, but her demeanour under even unmerited oppression or unprovoked cruelty must be studied by the Court. It is upon the sum of these considerations that the Court can alone decide whether a case is made for a decree.

The appellant affirms that a new law has been made to meet his case, and that it will form a dangerous precedent. I hope not. To the best of my judgment it is the case which is new and not the law. I have searched the recorded decisions of the Matrimonial Courts in vain for a case, the features of which in any considerable degree resemble the present. It has no parallel in the past, and as to becoming a precedent it is hardly likely to find one in the future. So much injustice, so much perversion of mind, such abiding rancour for so trifling a cause, so much deliberate oppression under provocation so slight—moral chastisement so severe, administered with so much system, maintained with such tenacity up to the brink of so perilous a danger to health, with so utter a disregard of consequences, and all to extort confession of acts never committed, and force repentance without consciousness of wrong, will probably never be exhibited again. That such a case should recur, it would be necessary that to an inflexible will should be added the power of self-deception in an inordinate degree, so that the promptings of angry resentment should be mistaken for the voice of duty, and that while religion should be put forward to sanction and even enjoin a harsh and cruel retaliation, the leading precepts of religion, humility and forgiveness, should be altogether forgotten or but little heeded.

*Appeal dismissed.*

---

Attorneys—Gregory, Rowell & Rawle, agents for Duncan, Squarey & Co., Liverpool, for petitioner; the respondent in person.

---

PROBATE. } In the goods of ROBERT RAINE  
1870. } PEEL.  
March 15. }

*Will—Executor, appointment of—Error as to Christian Name—Ambiguity.*

*The testator by his will appointed "Francis Courtenay Thorpe, of Hampton, gentleman," one of his executors. The only person answering the description was a youth of twelve, the son of Francis Corbet Thorpe, of Hampton, gentleman, who, previous to the execution of the will, had been asked by the testator and consented to be one of his executors and trustees:—Held, that there was no ambiguity to entitle the Court to inquire into the intention of the testator so as to ascertain which of the two—the father or son—he meant to be executor.*

Robert Raine Peel, late of Hampton, in the county of Middlesex, gentleman, deceased, died on February 9th, 1869, leaving a will dated January 28th, 1869, in which he appointed "Francis Courtenay Thorpe, of Hampton aforesaid, gentleman," with two others, his executors and trustees. The only person answering the description of "Francis Courtenay Thorpe, of Hampton, gentleman," was a minor of the age of twelve, the son of Francis Corbet Thorpe, gentleman, of Hampton.

The testator, in January, 1869, before he executed his will, asked Mr. Francis Corbet Thorpe to be one of his executors and trustees in conjunction with the two other gentlemen, whom he afterwards named executors, and Mr. Thorpe consented thereto. It also appeared from the affidavit of Mr. J. Taylor, jun., who drew the will from instructions given by the testator, that beyond all doubt he intended to appoint Mr. Thorpe one of his executors, and that "Courtenay" was inserted by mistake as one of Mr. Thorpe's names.

Dr. Spinks moved the Court to decree probate to Mr. Francis Corbet Thorpe as one of the executors named in the will. He submitted that the description in the will was not applicable to a youth of twelve. There was, therefore, an ambiguity, and the Court was at liberty to look into the facts to ascertain what the intentions of the testator were.

LORD PENZANCE.—If the Court is at liberty to look into the facts, there is no difficulty whatever in deciding that the person the testator really meant was the father; but the question is whether the Court is so at liberty. So far as I can see, the description, "Francis Courtenay Thorpe, of Hampton aforesaid, gentleman," is a description that does apply to this youth of twelve. He has the Christian names therein given; he lives at Hampton, and he is a gentleman, and I can see no ground on which the Court can entertain the question as to what the testator meant. He has given a description which, when it comes to be applied to the facts, corresponds with an existing person, and does not correspond with any other existing person. There is, therefore, no ambiguity, and the Court is not at liberty to exercise its discretion or to investigate the question which of the two the testator meant. Probably the testator has not expressed his real meaning, but the Court cannot inquire whether he has done so or not. Whatever my reluctance may therefore be, I am bound to refuse the application.

*Application refused.*

Attorney—John Taylor.

MATRIMONIAL. }  
1870. }  
Mar. 17, 22. }

NEWMAN v. NEWMAN.

*Wife's Petition for Dissolution of Marriage—Unreasonable Delay—20 & 21 Vict. c. 85. s. 31—Decree.*

*The marriage took place in 1844. In 1848 the husband was guilty of incestuous adultery; and in 1850 he and the wife separated. Yielding to the entreaties of her mother, the wife abstained from instituting her suit until after her mother's death, which occurred in 1868:—Held, to constitute unreasonable delay, but decree granted on consideration of all the circumstances of the case.*



This was a petition by the wife for dissolution of marriage, on the ground of her husband's adultery with her sister. The respondent did not appear. The marriage took place in 1844; the adultery with which the husband stood charged was committed in 1848, and in 1850 he and his wife separated. At the hearing of the petition before the Judge Ordinary on Thursday, March 17th, the petitioner (a schoolmistress) was called, and the explanation which she gave of the delay in instituting the proceedings was that her mother was very reluctant to expose the scandal which had occurred, and that, yielding to her entreaties, she had refrained from instituting the suit until her mother's death, which occurred in 1868.

*Kemp* (with him *Keeble*) for the petitioner.

The charge in the petition was proved, but the Court took time to consider whether the petitioner had been guilty of such unreasonable delay as deprived her of the right to a decree.

*Cur. adv. vult.*

On the 29th of March the following judgment was delivered—

THE JUDGE ORDINARY.—In this case the petitioner proved, to the satisfaction of the Court, that many years ago her husband was guilty of incestuous adultery with her sister. That was followed by a separation between the husband and the wife. The wife no longer lived with him; and, according to the statement of the wife, the intimacy between him and his sister-in-law was continued afterwards, and they appeared to have lived together. But a long time has elapsed. The events to which she speaks occurred near twenty years ago, and she admitted fairly at the hearing that the reason why she had not applied to this Court before was that her mother was very averse to having the matter disclosed, and that she had yielded to her mother's wishes. At the time of the hearing, I expressed an opinion that it constituted "unreasonable delay," because it amounted to this, that a party having a good cause did not come into Court on account of the pain which the disclosure would occasion

to the feelings of her family. I adhere to the opinion that that is "unreasonable delay." But the Act does not say that in all cases where there is unreasonable delay the decree shall be refused. Although there may have been unreasonable delay, still the Court may grant a decree. Therefore, the question really is, whether, assuming unreasonable delay, the Court, under all the circumstances of the case, ought to withhold the decree? There was, no doubt, before the passing of the Divorce Act, a class of cases which did invite criticism in respect of unreasonable delay—cases where the husband's honour had been wounded, and he had put up with his own disgrace. In such cases, the House of Lords acted on the principle, "*Vigilantibus, non dormientibus, jura subveniunt.*" That is a class of cases to which, no doubt, the discretionary bar would not apply; but, looking at all the circumstances of this case, I don't think it right to withhold the decree, and I shall therefore make the decree *nisi*, with costs.

*Decree nisi with costs.*

Attorney—E. Moss, for petitioner.

MATRIMONIAL.  
1869.  
Dec. 21.

YEATMAN *v.* YEATMAN AND  
RUMMELL.

*Stay of Proceedings—Costs—Non-payment of costs by Husband who has failed in a Suit—Fresh Suit for other Adultery.*

*Non-payment of the costs of a suit for dissolution of marriage, in which the husband, the petitioner, has failed, is not a ground for staying proceedings in a suit by him for dissolution on the ground of fresh adultery.*

This was a suit by a husband for dissolution of marriage. The petitioner had previously instituted another suit for dissolution of marriage, charging adultery with a different co-respondent, in which he had failed, and had been condemned in costs: These costs had not been paid.

*Searle*, for the respondent, moved the Court to order the proceedings to be stayed until the petitioner should pay the costs of the former suit.

A Court of Common Law will stay proceedings in an action until the plaintiff pays the costs of a previous action, if it is satisfied that the cause of action is the same in both, and that the proceedings are likely to harass the defendant. Here, both the suits instituted by the petitioner are for the same cause, viz., the alleged adultery of the respondent. He cited *Prosser v. Locksley* (1), *Hoare v. Dickson* (2), *Cobbet v. Warner* (3).

LORD PENZANCE.—I have looked into the authorities and I find, that when a plaintiff having failed in one action brings another for the same cause, the Court will order him to pay the costs of the former proceedings before he goes further. That is not the case here. The petitioner is asking for the same remedy as in the former suit, viz., to get rid of his wife; but on the ground of adultery with a different co-respondent, and it cannot be said, therefore, that the cause of action is the same. I refuse the application.

*Application refused.*

---

Attorney—S. Edwards, for respondent; the petitioner in person.

MATRIMONIAL.

1870.

March 8,  
22, 29.

MILLER v. MILLER.

*Husband's suit for Restitution — Wife ordered to return to Cohabitation — Wife abroad, and Address unknown—Substituted Service of Order—Order not obeyed—Sequestration against Wife's separate Estate —Practice.*

In a suit by the husband for restitution of conjugal rights, a decree was made that the wife should return to cohabitation. The wife was abroad; her address was kept secret by her friends, and personal service of the decree could not be effected. Substituted service on her attorney was in consequence allowed, and the decree remaining unobeyed, the Court, without requiring a previous writ of attachment to issue, granted a writ of sequestration against the wife's separate estate, for the purpose of enforcing obedience to its order.

This was originally a suit for restitution of conjugal rights brought by the husband. The respondent, in her answer, made certain charges against her husband, which at the hearing she withdrew. The Court decreed that she should return to cohabitation, and subsequently condemned her in the costs incurred by the husband in the suit (*ante*, p. 4). The respondent was abroad, and had not obeyed the decree of the Court, which, with the order as to costs, was served, by permission, on her attorney.

*Dr. Spinks* (with him *Dr. Tristram*), on behalf of the petitioner, moved the Court (March 8th) to order a writ of sequestration to issue against the separate estate of the respondent, for the purpose of compelling her to obey its decree by returning to cohabitation.

*Dr. Deane* (with him *Henning* and *E. Browning*), for the respondent, opposed the motion.—The Court is asked to issue the writ against certain specified property, but that property is in the hands of third persons as trustees, and cannot be affected

---

(1) 3 B. & S. 826; s. c. 32 Law J. Rep. (N.S.) Q.B. 227.

(2) 7 Com. B. Rep. 164; s. c. 18 Law J. Rep. (N.S.) C.P. 158.

(3) 26 Law J. Rep. (N.S.) Q.B. 94; s. c. Law Rep. 2; Q.B. 108.

by it—*Dent v. Dent* (1); *Clinton v. Clinton* (2); *Orrispin v. Cumano* (3).

[LORD PENZANCE.—What the Court has to look at is whether a general writ of sequestration should not issue, with the view of bringing the respondent to reason. When it is issued, the sequestrator may or may not be able to seize the property, but with that the Court has now nothing to do.]

By the practice of the Court of Chancery the writ of sequestration must be preceded by a writ of attachment—*Morgan and Chute's Chancery Statutes and Orders* (Order 29, Rule 3), 539; *Braithwaite's Record and Writ Practice*, 239-241; *Seton on Decrees*, 3rd ed., 1,224. The practice was modified in the case of ecclesiastical decrees by 2 & 3 Wm. 4. c. 93. s. 2; and exception has also been made in the case of debtors by the Debtors Act, 1869 (32 & 33 Vict. c. 62. s. 8)—*Sykes v. Dyson* (4). There have been cases—*Hodgson v. Hodgson* (5)—in which, on a plaintiff coming before the Court and representing that an attachment would be worthless, that form has been dispensed with; but these cases were *ex parte*, and if they had been gone into it would have been difficult to shew jurisdiction. The party must shew that he is in a position to issue an attachment.

[LORD PENZANCE.—Is he not so here?]

No; he is not in a position to ask for an attachment until the order of the Court has been personally served on the respondent—*Hope v. Carnegie* (6).

[LORD PENZANCE.—It is very unreasonable to say, if a party keeps abroad, that you cannot issue a writ of attachment because you have not served him with the order of the Court, and that you cannot issue a writ of sequestration because you have not issued a writ of attachment. The legislation to which you have referred is in the opposite direction.]

(1) 36 Law J. Rep. (N.S.) Prob. & M. 61; s. c. Law Rep. 1, P. & D. 366.

(2) Law Rep. 215; P. & D. 1.

(3) 38 Law J. Rep. (N.S.) Prob. & M. 28; s. c. Law Rep. 1, P. & D. 622.

(4) 39 Law J. Rep. (N.S.) Chanc. 288; s. c. Law Rep. 7; Eq. Cas. 228.

(5) 23 Beav. 604.

*Dr. Spinks*, in reply.—We must take it as decided in this Court that it has the power to issue a writ of sequestration without a previous attachment. *Dent v. Dent* (1); *Clinton v. Clinton* (2). In *Hope v. Carnegie* (6), the lady was abroad, but it does not appear that her address was not known. Here it is otherwise; the respondent has, ever since the decree, remained abroad, and her address is kept secret by her family and her solicitor. If, under such circumstances, personal service were to be held necessary, it would be utterly impossible to enforce a decree of the Court. But section 53 of the Divorce Act empowers the Court to make rules for its practice, and under Rule 16 (Rules and Regulations, 1866), where an order cannot be personally served, application may be made to the Court to allow substituted service, and that is what has been done here.

*Cour. adv. vult.*

LORD PENZANCE (March 22).—This case involved the question whether the Court could properly issue a writ of sequestration with a view of compelling a party to the suit to obey its order. That question depended upon another, and it was this—whether Courts of Equity, whose powers in this respect are by the Probate Act conferred upon this Court, have or have not been in the habit of issuing writs of sequestration for such a purpose. It was not denied that they had; but it was said that it was the universal practice in Courts of Equity, before such an order could be made, that it should be preceded by the issuing of a writ of attachment. Now it would certainly be a very unfortunate state of things if that were so, because it would lead to the necessity for issuing a writ of attachment, which in many cases would be a mere idle proceeding, as a preliminary to taking the only step which would be of any use; for if a person who was in contempt were out of the jurisdiction, the issuing of a writ of attachment would be of no avail. What Courts of Equity have been in the

(6) 38 Law J. Rep. (N.S.) 410 Chanc.; s. c. Law Rep. 7; Eq. Cas. 263.

habit of doing is this, to look upon this writ of sequestration as a further measure to be resorted to if the writ of attachment, which is the ordinary method of enforcing its orders and decrees, should prove unsuccessful. Where the writ of attachment would be productive of any benefit, it would first be tried before they resorted to a writ of sequestration; but it would be rather singular if, where a writ of attachment would be entirely useless, they should insist upon it before granting a writ of sequestration. Upon looking into the cases I do not find that the proposition as regards the practice of Courts of Equity which has been contended for has been maintained. In the case of *Hodgson v. Hodgson* (5) a decree was made ordering the defendant to pay a certain sum of money into Court, and to pay the costs of the suit. Previous to the decree the defendant had gone to Australia. The plaintiff, by mistake, issued an attachment into the county of Westmoreland, instead of into the county of Lancaster, in which the defendant had resided before going abroad, and a return had been made of *non est inventus*. The Court was then moved that a writ of sequestration might issue, without a return to an attachment in the county of Lancaster, and the Master of the Rolls said:—"It would be an idle form to issue another attachment. Take the order." I am quite of the same opinion as the Master of the Rolls; it would have been a very idle proceeding indeed to have issued an attachment under such circumstances. Again, in *Butler v. Mathews* (7), the question was whether, the party being out of the jurisdiction, the Court should proceed and take the bill *pro confesso*. The Master of the Rolls said:—"To obtain a decree *pro confesso* you must proceed with the greatest care." The case stood over for consideration, and two cases having been produced, in which it was held that when a defendant was out of the jurisdiction an attachment need not be issued, the order was made. That, no doubt, is only an analogous case, but it proceeded on the same principle that

where a writ of attachment would be of no use, it need not issue. In the case of *In re the East of England Bank* (8), which is a more recent case and very much to the purpose, application was made to Vice Chancellor Sir R. T. Kindersley for a writ of sequestration, without attachment, against Mr. W. Hall who had been placed upon the list of contributories to the bank, and who was abroad. The learned Judge said, "If the practice is, that in order to obtain a writ of sequestration you must first get a writ of attachment, the effect is, that there is no provision for sequestration in the case of persons who are not resident in England;" and he made the order for a writ of sequestration to issue without any previous writ of attachment. That is a direct authority in favour of what appears to me to be the more sensible course to pursue. I shall order the issue in this case of a writ of sequestration, it being understood that the Court does not now enter into the question as to what property may or may not be affected by it. That is a question which may arise hereafter, and when it does it will have to be argued. I do not decide it now. The writ of sequestration will issue with costs.

[Subsequently (on March 29) *Dr. Tristram* said that the application for the writ was on the ground of non-compliance with the decree of the Court, and for non-payment of costs, and that it had been since ascertained that the costs were paid the day before the motion, and the petitioner was therefore not entitled to the writ on that head.

LORD PENZANCE.—It was not granted for that, but for the disobedience of the wife to the monition of the Court in not returning to cohabitation.]

---

Attorneys—R. Miller, for petitioner; A. Jones, Smith & Co., for respondent.

---

(7) 19 Beav. 549.

(8) 10 Jur. (n.s.) 1093.

PROBATE  
 1870. } ROBERTSON v. SMITH AND  
 Jan. 25. } OTHERS.  
 Feb. 15. }

*Will—Codicil beginning "I hereby make a free gift to A. B.," &c.—Probate.*

*The testator, shortly before his death, executed a paper which began, "I hereby make a free gift to A. B., of," &c. The Court being satisfied that he intended the operation of the paper to be dependent on his death, granted probate of it as a codicil to his will.*

The testator, Frederick Craven, late of St. John's Villas, Holloway, in the county of Middlesex, died on the 8th of November, 1868. He made a will on the 29th of July, 1868, and added a codicil thereto on the 12th of October, 1868. On the 7th of November, 1868, he being then in a very weak condition, the following paper was prepared at his request, and executed by him in the presence of two witnesses:—

"I hereby make a free gift to Martha Robertson of sixty pounds, and to John Virtue of fifty pounds, being the sum deposited by me with the Islington branch of the London and County Bank.

"The cross x of Frederick Craven,  
 "J. Tarrant, } Witnesses.  
 "John Virtue, }

Miss Robertson, the plaintiff, propounded it as a second codicil. The defendants, who were the executors, pleaded that it was not duly executed, and that the deceased did not make it as a second codicil.

*Littler*, for the plaintiff.

*Tindal Atkinson*, for the defendants.

At the hearing, on Friday, January 28, Mr. Virtue, the legatee and attesting witness, said that he was asked to draw the paper by Mrs. Smith, with whom the deceased lodged, on the 7th of November, 1868; that the deceased was then in a low state, and that when Miss Robertson observed, "Mr. Virtue has called about the money, of which I am to have 60*l.* and he 50*l.*," the deceased replied in a low tone "Yes." Mr. Virtue then wrote out the paper and read it twice over to the deceased, the second time when the

second attesting witness came in. The deceased then put his mark to it in their presence. Mrs. Smith deposed that when Miss Robertson spoke to him about the deposit note, he replied it was in his box at the bank, and that he then called to Miss Robertson and said "I should like Mr. Virtue to have 50*l.* and you the rest to do the burial." The medical man who attended the deceased stated that he was paralysed, but conscious.

*Curr. adv. vult.*

LORD PENZANCE (on Feb. 15).—The Court took time to consider its judgment in this case, in which the question was whether the paper propounded was of such a character as to be testamentary. The paper, which is dated November 7, 1868, is in these terms:—"I hereby make a free gift to Martha Robertson of 60*l.*, and to John Virtue of 50*l.*, being the sum deposited by me with the Islington branch of the London and County Bank." That was signed by the testator in the presence of two witnesses. It has long since been determined that the language of a paper is not sufficient to determine absolutely whether the paper is of a testamentary character or not. To make it testamentary the intention of the writer must have been that the gifts or dispositions contained in it should be dependent on his death. The question then is how you are to get at that intention. The Court has long since decided that if the language of the paper is insufficient, you may investigate the question of a testator's intention by parol evidence; and looking to the facts in this case, I have no doubt that the testator did intend that those gifts should be dependent on his death. This was a sum which he had in the bank, and the Court has no doubt that by this disposition he did not intend to strip himself absolutely of it, if, contrary to all expectation, he had survived. The Court, therefore, pronounces for the instrument; costs of both parties to come out of the estate.

Attorneys—Digby, Sharp & Large, for plaintiff;  
 A. Digby, for defendants.

PROBATE.  
1870. } In the goods of WILLIAM  
March 8, 29. } GRAY.

*Will—Revocation by later Will—Proof by Declarations of Testator.*

*The testator made a will in 1831. A few years before his death in 1863, he produced to two acquaintances a paper dated 4th June, 1847, which he alleged to be his will, and got one of them to make a copy of it. This paper was in substance the same as the will of 1831. It had the name of the deceased and the names of two attesting witnesses at the bottom of it, but neither of the persons to whom it was shewn could speak to any of the signatures. The copy which the deceased signed in their presence was forthcoming, but the original document could not be found:—The Court held that there was no evidence of its existence as a will, and granted probate of the will of 1831.*

The testator, William Gray, late of Manchester, died on the 23rd of August, 1863. By a will, which bore date April 18th, 1831, he named his wife universal legatee, but appointed no executor. About three years before his death he produced to two persons of the name of Scott a paper dated the 4th of June, 1847, which he alleged to be his will, and at his request William Scott copied it, except the name of the deceased, which was at the foot or bottom of it. The paper purported to be a will, and had the names of two attesting witnesses—Samuel Kay, senior (who was the deceased's solicitor), and Robert Robinson, his clerk—both since deceased. The testator signed the copy in the presence of the Scotts. No search was made among his papers until the death of his widow in 1869, and the only testamentary papers then forthcoming were the will of 1831 and the copy of the alleged will of 1847. The Scotts were unable to depose to the writing of any of the signatures to the original document which the deceased had produced to them, and no draft or other record of such a will could be found in the office or books of Mr. Kay. In both wills the disposition of the property was the same.

*Bayford moved the Court to grant*

*administration (with the will of 1831 annexed) of the personal estate and effects of the deceased William Scott to the executors of his widow. There was no sufficient evidence of the execution of the will of 1847. If there were, the principle of dependent relative revocation would apply, and the copy would be entitled to probate.*

*Our. adv. vult.*

LORD PENZANCE (on March 29).—The testator made a will many years ago, before the Wills Act came into operation; that will is still existing, and is, no doubt, a valid will, unless it has been revoked. The way in which it is said it may have been revoked is by a second will made in 1847, but that will is not forthcoming. The first question is, whether it ever existed. Before the Court can hold an existing will to be revoked by another, it must have evidence of the existence of that other will as a valid document. In this case the paper itself is not in existence, and all that the Court knows about it is simply this:—Some time before his death, the testator called upon two persons of the name of Scott, and produced a paper which he spoke of as his will, and asked one of them to copy it. The copy before the Court is all in the handwriting of Scott, and is apparently a will, and there are at the bottom of it the names of two attesting witnesses, who were existing persons—the solicitor of the deceased and his clerk. Scott did not copy the name of the testator, his statement to the Court being that the testator desired to sign it himself; and from it the Court would be led to the supposition that the testator thought that by having a copy made of his will, which had the names of two attesting witnesses at the bottom of it, and by signing that copy, he could make a good will. It is clear that he could not. But the question is, is there evidence of the original document itself existing as a valid will? Scott, who made the copy, does not state in his affidavit that he is able to depose to the original paper being signed in the handwriting of the deceased, and what is more, he does not profess to depose even to the writing of the two witnesses. The result, therefore, is this—A paper is pro-

duced with the name of the testator and the names of two witnesses, but no proof of the writing of any of them, except the statement to Scott by the testator that it was his will. Is that enough to satisfy the Court of the existence of the document as a will? I am constrained to hold that it is not. It has been already held at common law that a statement by a testator that he has made a will cannot be evidence of its execution. That is a question, perhaps, that may have to be considered at a future period. There may be cases in which it would be impossible to exclude such evidence, but up to the present it has been held that such statements are inadmissible, and therefore this statement by the testator as to the execution of this will is not evidence. But suppose it to be admissible, does it go far enough? I think not. The Court ought to have some evidence beyond the statement of the testator as to the paper having been duly signed by two persons as witnesses. In the absence of evidence of writing, it seems to me that proof of the will of 1847 fails, and that failing, all the other questions fall to the ground, and nothing stands in the way of the original will being proved.

Proctor—A. Ayrton.

PROBATE.  
1870.  
May 10, 17. } *In the goods of G. G. MERCER.*

*Will—Original in India—Copy referred to and confirmed by Codicil—Probate.*

*The testator made his will in India and deposited it with a bank at Calcutta. While temporarily resident in Scotland he executed a codicil, in which he referred in distinct terms to a copy of the will. This copy he produced to the witnesses at the time he executed the codicil, and he deposited both papers in the hands of his executor:—Held, that the copy was incorporated by the codicil, and probate of the copy-will and codicil was granted, without production of the original will.*

George Graeme Mercer, formerly of Futtighur, in the East Indies, died, while

temporarily resident in Scotland, on the 29th of October, 1869. He made in India a will, in which he appointed executors, and deposited it with the Bank of Bengal at Calcutta, where it still remains. On the 21st of August, 1869, he duly executed a codicil, which commenced thus:—“This is a codicil to the last will and testament of G. G. Mercer, formerly of Futtighur, in India, presently residing temporarily at Ballertin, in Perthshire, retired indigo planter, dated the 7th of November, 1865, and of which I, along with this codicil thereto, execute a copy, and homologate and confirm the same in all particulars, except in so far as altered or revoked by this codicil.” After revoking certain legacies, he nominated two executors for England and the island of Jersey, conjointly with the executors named in his will, and finally ratified and confirmed his said will. At the time of the execution of this codicil he produced and shewed to the witnesses a document, which he informed them was a copy of his will. Further, there was this memorandum in his handwriting at the bottom of it:—“This is the copy of my will or testament referred to in the codicil, signed by me, this 21st day of August, 1869, G. G. Mercer.” He subsequently executed two other codicils, and delivered all three papers, with the copy-will, to one of the English executors, telling him, at the same time, that the document was a correct copy of his will.

*Inderwick* (on May 10) moved the Court to grant probate of the three papers and the copy-will, as incorporated therewith, to the executors named in the first codicil.—It would be difficult to obtain the original will, and immediate probate was required.

*Cur. adv. vult.*

LORD PENZANCE (on May 17) held that the codicil incorporated the copy-will, and decreed probate of it, with the other papers. Such a course, he said, would save time and trouble, the original will being in India and perhaps not easily accessible.

Attorneys—Thomas & Hollams.

PROBATE. }  
1870. } GREENHALGH v. BATES.  
March 22, 29. }

*Will—Residuary Legatees—Vested Interest—Right to grant de bonis non.*

The testator left by his will to his wife a life interest in his real, leasehold and personal estates, with permission to consume such portion of the personal estate as was consumable by nature. On her death or re-marriage, he gave his real and leasehold estates and such personal estate as then remained unconsumed to his children in equal shares, their executors, administrators and assigns, with a proviso that if all and every his children died before obtaining a vested interest under the will, the property should go in equal shares to his then next and nearest of kin, and the then next and nearest of kin of his wife. The testator's only child survived him, but died in his mother's lifetime and previous to her re-marriage. The wife died leaving part of the estate unadministered:—Held, that the child did not take a vested interest under the will, and administration was granted to the next of kin of the testator.

John Greenhalgh, late of Failsworth, Lancashire, died on the 7th of April, 1856, leaving a will dated the 17th of September, 1855, in which he appointed his wife, Mary Greenhalgh, executrix. The material parts of the will were as follows:—

"This is the last will and testament of me, John Greenhalgh, of Failsworth, in the county of Lancaster, shopkeeper. I give, devise and bequeath all and singular the real, leasehold, and personal estate and effects (except such as may be vested in me only as trustee or mortgagee) of which I shall be seized or possessed, or otherwise entitled to at my decease, unto my wife, Mary . . . Upon trust, so long only as she shall continue my widow, to use and enjoy my furniture and household and other effects, and to consume such of the said personal estate and effects as are consumable by nature, and to receive and apply the income arising from the said real, leasehold and personal estates for the maintenance of herself, and the maintenance, education and bringing up

of all and every my present and future children and child. And upon or immediately after the decease or second marriage of my said wife, I give, devise and bequeath my real and leasehold estates, and my personal estate and effects then remaining unconsumed, unto all and every my present and future children and child, and, if more than one, in equal shares, and their respective heirs, executors, administrators and assigns, as tenants in common, and not as joint tenants, according to the nature and tenure of the said estate and effects respectively. Subject, nevertheless, to, and in the event of the second marriage of my said wife, I hereby charge the same with the payment to her during the remainder of her life of an annuity or clear yearly sum of fifteen pounds by equal quarterly payments, the first of which shall be due on the day of such her second marriage . . . If all and every my children and child shall happen to die before attaining a vested interest under this my will, then I give, devise and bequeath my real, leasehold and personal estates and effects, subject as herein mentioned, unto the then next and nearest of kin of myself, and the then next and nearest of kin of my said wife in equal shares as tenants in common, and not as joint tenants, and their respective heirs, executors, administrators and assigns, according to the nature and tenure thereof respectively."

The testator left surviving him one child, John Greenhalgh, who died a bachelor and under age, on the 16th of June, 1856. Mary Greenhalgh, the widow and executrix, proved the will in April, 1856. On the 27th of April, 1858, she married John Bates, and she died on the 1st of September, 1869, leaving part of the estate of the deceased, John Greenhalgh the elder, unadministered. Samuel Greenhalgh, the plaintiff, claimed the grant *de bonis non*, as the natural and lawful brother, and one of the next and nearest of kin of the testator at the time of the second marriage of Mary Greenhalgh, and at the time of the death of John Greenhalgh the younger. The defendant, John Bates, claimed the grant as the representative of John Greenhalgh the younger, through his mother, Mary Bates, by reason that



under the will the whole property, subject to the life interest of Mary Bates, vested in John Greenhalgh the younger, on the death of his father. The question was, what interest John Greenhalgh the younger took under the will?

*Bayford*, for the plaintiff, admitted that, if the gift to the children after the decease or second marriage of the wife had stood alone, the estate would have vested absolutely in the child on the death of the testator; but the gift over to the next of kin of himself and the next of kin of his wife, contemplated the possibility of the death of the child or children in the lifetime of the widow, or before her second marriage. The words "vested interest" could not be taken in their ordinary sense, but meant an interest to arise on the death or second marriage of the widow. The gift over therefore took effect, and the plaintiff was entitled to the grant. He referred to *Re Baxter's Trusts* (1), and *In re Edmondson's Estate* (2).

*Dr. Tristram*, for the defendant, submitted that if a testator, in his will, makes use of words which are sufficient to establish in an individual a vested interest in property on the testator's death, he cannot divest that individual in a subsequent part of his will, except in clear and distinct terms. Such an interest, he contended, had been established by the testator in his son, and was not taken away by the subsequent part of the will. He referred to *Cassamayer v. Strobe* (3); 2 *Jarman on Wills*, 748 (ed. 1861); *Roper on Legacies*, 584; and *Re Thompson's Trusts* (4).

*Cur. adv. vult.*

LOED PENZANCE (on March 29).—The Court reserved for consideration this case, which depends entirely upon the construction of a will. The testator's will was shortly this:—He provided that his widow should continue to use and enjoy, so long as she remained his widow, his furniture and household and other effects, with authority to consume such of the personal estate and

effects as were consumable by nature, and to receive and apply the income arising from the real, leasehold and personal estates for the maintenance of herself and the maintenance, education and bringing up of all and every his existing and future children and child. It went on to provide that, after her death or second marriage, his real and leasehold estates and his personal estates and effects then remaining unconsumed, should go to his children; and then came the clause which is the subject of the present contention—"If all and every my children and child shall happen to die before attaining a vested interest under this my will, then I give, devise and bequeath my real, leasehold and personal estates and effects, subject as herein mentioned, unto the then next and nearest of kin of myself and to the then next and nearest of kin of my wife, in equal shares, as tenants in common and not as joint tenants, and their respective heirs, executors, administrators and assigns, according to the nature and tenure thereof respectively."

The events that happened were these:—The testator died, leaving a widow and one child. The child died a bachelor and under age in 1856; and the widow, two years afterwards, re-married. The question is, whether, under this clause, the child did or did not die before attaining a "vested interest" within the meaning attached to those words by the testator in his will? It is not denied that the terms of the will in the anterior part create, according to the rules laid down in Courts of Equity, a vested interest in the child at the death of the testator; but it is contended on the other side that the words "vested interest," as used by the testator in the proviso, were not used by him in a technical sense, but mean a vested interest in possession to arise on the death or second marriage of the mother. That is the question. Counsel on both sides referred me to several cases in the Courts of Equity in which this question was very largely discussed. The rules of construction in force in Courts of Equity on this head are somewhat technical, but the result amounts to this—that in each case the Court must construe the will by what it believes to be, on the whole phraseology of the will, the

(1) 10 Jurist, N.S., 845.

(2) Law Rep. 5 Eq. 389.

(3) 8 Jurist, 19.

(4) De Gex & G., 667.

true meaning of the testator. Approaching the question in that spirit, my opinion is that the testator did not refer to a vested interest of the technical character to which I have adverted, but to a vested interest to arise on the second marriage or death of his wife. The event for which the testator was providing was the second marriage or death of his widow. So long as she remained unmarried, his intention clearly was that she should use and enjoy all his furniture and household and other effects, consume such of the personal estate and effects as were consumable by nature, and receive and apply the rents and profits arising from the rest of his property. On her second marriage or death, he intended the provisions in favour of his children to come into operation, and the gift over was, I think, intended to take effect if at that time no child existed to take the benefit of such provisions. What also commends this construction is that the personal property left to the children was so much as was unconsumed on the death or second marriage of the widow, and until one or other of such events happened, the amount of the gift would be uncertain. I am of opinion that the person entitled to administration is the next of kin of the testator, namely, the plaintiff. I may add that it is only by consent of both parties that I have undertaken to decide this question, because I think it would be inconvenient for this Court, in a mere dispute as to a right to administration, to decide a question of construction which more properly lies within the province of a Court of Equity. It was suggested, however, that the property is small, and that it is improbable the matter will be further litigated.

The costs of both parties will be paid out of the estate.

---

Proctors—A. Ayrton, for plaintiff; G. C. Ring, for defendant.

---

MATRIMONIAL.  
1870.  
Mar. 19, 22.

PRITCHARD v. PRITCHARD  
AND BEAN.

*Practice — Matrimonial Suit — Co-Respondent removing his Effects — Peremptory Order for Payment of Damages — Writ of fi. fa.*

*In a suit by the husband for dissolution of marriage on the ground of the wife's adultery, damages to the amount of 500l. were assessed against the co-respondent. The Court granted a decree nisi, and condemned him in costs. On affidavits, shewing that the co-respondent was removing his effects, and evading service of a peremptory order for payment of the damages, the Court allowed a writ of fi. fa. to issue forthwith, without requiring personal service of the order.*

The questions at issue in this suit, which was the husband's petition for dissolution of marriage, on the ground of the wife's adultery with the co-respondent, were tried before the Judge Ordinary and a special jury on the 26th of February, 1870. A verdict was returned in favour of the petitioner; the damages were assessed at 500l., and the Judge Ordinary pronounced a decree nisi, with costs.

Affidavits were subsequently filed to the effect that the co-respondent, a coal-agent, had removed his furniture and effects from his house at Hampstead to the house of his mother-in-law, and that the costs and damages had not been paid, nor security given for them. Under these circumstances—

*Dr. Spinks*, on behalf of the petitioner, moved (on March 19th) for an order upon the co-respondent to pay the damages at once to the petitioner, or into Court.

The JUDGE ORDINARY directed that an order should issue to the co-respondent to pay the damages to the petitioner within two days from the date of the service of the order, and further ordered that in the event of the damages not being paid to the petitioner within that period, a writ of *fi. fa.* should issue forthwith.

On a further affidavit (March 22nd) that the co-respondent was evading service

of the order, the Court directed the writ of *fi. fa.* to issue forthwith, without a personal service of the order.

Attorneys—Wells & Sykes, for petitioner; W. D. S. Cooper, for respondent; Lambert & Burgin, for co-respondent.

PROBATE. }  
1870. } MORTIMER v. PAULL AND PAULL.  
May 5. }

*Practice—Testamentary Suit—Executor willing to act—Refusal to appoint Administrator pendente lite.*

*In a testamentary suit in which there was no dispute as to the appointment of the executors, and one of them was willing to act, the Court refused to appoint an administrator pendente lite, unless it could be shewn that there was something requisite to be done in relation to the estate which the executor, before probate, could not do.*

The testator, Charles Mortimer, by his will dated the 22nd of December, 1868, appointed the plaintiff, Charles Edward Mortimer, and Henry Paull executors. He subsequently executed two codicils, dated respectively the 23rd of December, 1868, and the 31st of August, 1869. In the second codicil he revoked the bequest of half the residue to his daughter, Mrs. Paull, and gave the whole to his son, the plaintiff, but did not, by either of the codicils, alter the appointment of executors. After the death of the testator, the defendants entered a caveat, and the plaintiff propounded the will and two codicils. The defendants did not oppose the will and first codicil, but pleaded the usual pleas in opposition to the second codicil. The questions at issue were ordered to be tried before the Court and a special jury.

*Inderwick*, for the defendants, moved for the appointment of an administrator *pendente lite*.—The testator was under covenant to certain trustees to pay over a certain sum of money and transfer a certain amount of stock. A bill was filed by the trustees in the Court of Chancery for the purpose of enforcing the covenant. There was no answer to the suit, and some one ought to be appointed to discharge

the claims. It was true the plaintiff was willing to act in his character of executor, to get in the estate and pay the claims against it, but his co-executor, the defendant, declined to act until it was determined what papers were entitled to probate.

*Searle*, for the plaintiff, opposed the application. The defendants had already applied to the Court of Chancery for the appointment of a receiver, and their application was refused, because there was an executor, whose appointment was not disputed, willing to act. Further, the powers of an executor before probate were much larger than those of an administrator *pendente lite*.—*Williams on Executors*, Vol. I., p. 291.

LORD PENZANCE.—The defendants ask for the appointment of an administrator *pendente lite* for the purpose of discharging certain functions in relation to this property. An application for a receiver was made by them to the Court of Chancery, and the Court refused the application because there was an executor, whose appointment was not disputed, willing to act. When they come to this Court they are met with the same answer: You do not want an administrator, inasmuch as there is a person who, by the terms of the testator's will, is empowered by law to discharge the very function for which you want the administrator *pendente lite*, and that person is prepared to discharge that function. If that be so, I am quite clear that the Court ought not to appoint an administrator *pendente lite*, but if the defendants can shew that there is something requisite to be done in respect of this property, which the executor before probate cannot do, they will then have laid the foundation for the appointment of some one who can. The Court is always ready to appoint an administrator *pendente lite* when there is a need shewn for it, and that will arise when there is something required to be done which the executor cannot do.

*Motion refused with costs.*

Attorney—W. H. Waller, for plaintiff.  
Proctors—Toller & Sons, for defendants.

PROBATE. }  
 1870. }  
 April 26. } *In the goods of WILLIAM HARRIS.*  
 May 3. }

*Probate — Two Wills: one limited to Property in England, the other to Property in Tasmania.*

*The testator died leaving two wills—one limited to property in England, the other to property in Tasmania, and he appointed different executors in each. The Court granted probate of both papers as together constituting the will of the deceased, to the executors named in the English will.*

The testator, William Harris, died at Leamington Priors, Warwickshire, on the 7th of August, 1869. He executed two wills, dated the 24th of May, 1867, and the 16th of July, 1867. In the first, he disposed only of his property in Tasmania, and appointed three persons resident in Hobart Town executors, with directions to transfer the residue of his property in Tasmania to the executors of his English will, to be by them invested. The second will commenced thus:—"This is the last will and testament of," &c., "so far as regards my property in England, I having by a separate and distinct will disposed of my property in the colony of Tasmania, and which will I ratify and confirm by this will; and I desire that the same may not be annulled, interfered with or affected by this will." He then disposed of his property in England, and appointed different executors from those in the first will. The second will was proved in the District Registry at Birmingham, on the 15th of October, 1869; but on the other will being presented for probate in the proper office at Hobart Town, it was refused, on the ground that both papers constituted the will of the deceased, and that therefore probate of both together should be taken.

*Pritchard* now moved the Court to revoke the probate already issued of the will of July, 1867, and decree probate of both papers as together constituting the will of the deceased. A similar order was made in the case (not reported) of *In the goods of Bishop Wilson* (November, 1866); but *In*

*the goods of Coods* (1) a different rule was adopted.

The COURT, having referred to the papers connected with the grant made *In the goods of Bishop Wilson*, directed the probate of the will of the 16th of July to be revoked, and decreed to the executors named therein probate of both papers as together constituting the will of the deceased.

Attorneys—Church, Sons & Clarke.

PROBATE. }  
 1870. }  
 April 26. } *In the goods of MARY WILLIAMS.*  
                   } *(In the goods of J. H. MORGAN.)*

*Administration — Citation to Husband to take grant of Wife's Estate—Applicant without direct Interest.*

*In an administration suit in Chancery it became necessary for the purposes of the suit, that a personal representative of A, the wife of B, should be appointed. The Court, at the instance of C, who had no direct interest, allowed a citation to issue to B to take administration of his wife's estate, or to shew cause why it should not be granted to C.*

James Hungerford Morgan, late of Tenby, in the county of Pembroke, a lieutenant in the Royal Marines, died on the 15th of April, 1851, a bachelor and intestate, leaving Mary Morgan, his sister, and Thomas Sleeman, Elizabeth Briggs, Mary Sleeman, and James Sleeman, the children of another sister, the only persons entitled in distribution to his property.

Letters of administration of his personal estate were granted to Mary Morgan, who died in January, 1852, without having distributed the property, and leaving a will in which she appointed Mary Sleeman, her niece, sole executrix. Mary Sleeman took probate of the will, intermarried with William Williams in 1857, and died in September, 1863. She took possession of a portion of James H. Morgan's pro-

(1) 36 Law J. Rep. (N.S.) Prob. & M. 129; s. c. Law Rep. 1 Prob. & D. 449.

bate, but disposed of it as if it belonged to the testatrix, Mary Morgan. In December, 1867, administration of the unadministered goods of James H. Morgan was granted to Thomas Sleeman, and in September, 1868, a suit was instituted by James Sleeman in the Court of Chancery, for the administration of the estate of James H. Morgan. For the purposes of this suit it was necessary that a representative of the estate of Mary Williams should be appointed.

*Dr. Spinks* now moved the Court, on behalf of James Sleeman, to allow a citation to issue, calling upon William Williams to take administration of the goods of his wife, or shew cause why the grant should not be made to James Sleeman. He referred to *In the goods of Mary Keane* (1), *In the goods of George Johnson* (2).

LORD PENZANCE.—It seems to follow, from the necessity of the case, that some method should be devised to litigate the question, whether and to what extent the estate of Mary Williams is indebted to that of James H. Morgan, and for that purpose a representative of Mary Williams must be appointed. The applicant has no direct interest, but he has an indirect one, and if the husband will not take the grant, the applicant ought to be entitled to it. At present, however, I have no *constat* of the proceedings in Chancery. When they are brought in, the citation will issue, and after it has been returned it will be for consideration whether the grant to the applicant shall be limited, and if so, to what extent.

---

Attorneys—T. White & Sons.

---

PROBATE. }  
1870. } *In the goods of the REV. J.*  
May 10. } G. RYDE.

*Practice—Scotch Confirmation sealed in England—Additional Property discovered in England—Fresh Inventory, and additional Confirmation sealed in Registry.*

*On the death of the testator, a domiciled Scotchman, his widow filed in the Commissary Court at Jedburgh an inventory of his estate, distinguishing which part was situate in Scotland and which in England, and the value of each, and she was decreed and confirmed executrix dative to the deceased. The confirmation was sealed in England under the provisions of the Confirmation and Probate Act. Subsequently additional estate was discovered in England. Thereupon the executrix filed a fresh inventory of such estate in the Commissary Court, and obtained an eik or additional confirmation:—The Court ordered the eik to be sealed in the Registry.*

The Rev. John Gabriel Ryde, a domiciled Scotchman, died at Melrose, Roxburghshire, on the 7th of December, 1868. He left a will in which he gave certain property to his wife, but did not appoint an executor or dispose of the residue of his estate. The widow filed in the Commissary Court at Jedburgh an inventory of the estate, distinguishing which part was situate in Scotland and which in England, and the value of each, and on the 4th of March, 1869, the Commissary of Roxburghshire decreed and confirmed her executrix dative to the deceased.

This confirmation was sealed in the Registry of the Court of Probate in England on the 24th of March, 1869. In July, 1869, a sum of 10,722l. 14s. 7d. became payable in England to the estate of the deceased. The widow filed in the Commissary Court at Jedburgh a further inventory, containing, in addition to the property included in the first inventory, that which subsequently accrued to the deceased's estate, and thereupon an eik or additional confirmation, under seal of the Commissary, issued to her on the 26th of February, 1870. The duty on the additional inventory had been paid, and "caution" found in respect of the pro-

H

(1) 1 Hag. 692.

(2) 2 Sw. & Tr. 595.

party therein contained. The seal of the Court was refused to be attached to the eik in the Registry, on the ground that the whole of the property contained in the additional inventory was situate in England.

*Dr. Spinks* (with him *Pritchard*) moved the Court to order that the seal of the Court be attached to the additional confirmation. He submitted that the applicant having followed all the directions of the Confirmation Act (21 & 22 Vict. c. 56) was entitled to have the additional confirmation sealed. Section 15 required that the inventory should include the whole of the personal estate in the United Kingdom; and the value thereof, and section 16 incorporated the 48 Geo. 3. c. 149. s. 38, which expressly provides that "if at any subsequent period a discovery shall be made of any other effects belonging to the deceased, an additional inventory or additional inventories of the same shall within two calendar months after the discovery thereof be in like manner exhibited, &c., &c." It further inflicted a penalty of 20*l.* for neglect of the provision, and the executrix had no alternative but to file the additional inventory. This case is distinguishable from *In the goods of Gordon* (1), *In the goods of Wingate* (2), and *In the goods of Hutcheson* (3).

LORD PENZANCE.—I think this application ought to be granted. For my own part I should have been well content if in those former cases, saving only the first—*In the goods of Gordon* (1), the Court had held that the confirmation might be sealed. Still, if the present case were, in all its circumstances, like those cases, I should feel myself bound to follow the decision of my predecessor. But I do not think that the previous cases do determine this case for the reasons pointed out by counsel. In this case there exists what did not exist in the previous cases—an original inventory and confirmation made under the provisions of the statute, which coupled the Scotch and the English estates together, treating them as the subject of

one grant, and that confirmation afterwards sealed in England. That being so, and the intention of the Confirmation Act, referring as it does to the previous Acts regarding probate, being that where an additional portion of the estate is subsequently discovered, a fresh inventory should be filed of such additional estate, and should, so to speak, be drawn back to the original confirmation, I think that that ought to be done now when the property is discovered which would have been done in the first instance had its existence been then known. There is, as I have said, a feature in this case which certainly did not exist in either of the cases referred to. The Court, therefore, is not bound by those decisions, and the application may be granted. It might be inconvenient if the Court were to decide otherwise. I see no harm in the seal being put to the grant; whereas, if the Court were to decide otherwise, it might subject the parties to great difficulty in ascertaining what their proper duty in the matter was.

Attorney—D. E. Forbes.

#### MATRIMONIAL.

1870.

May 17;

June 7.

ST. PAUL v. ST. PAUL AND  
FARQUHAR.

*Divorce—Settlements, alteration of—Income of Guilty Wife—Total Income allotted to Maintenance of Children.*

On the marriage of the parties the father of the respondent (the wife) brought into settlement a sum of 3,000*l.*, in which the first life-interest was given to the respondent. Her conduct was bad, and after her marriage with the petitioner had been dissolved, she intermarried with the co-respondent, an officer in the army. The Court ordered that the total income derived from the fund in settlement should be applied, during the lifetime of the respondent, to the maintenance of the three children of the marriage.

A decree *nisi* for dissolution of the marriage on the husband's petition was

(1) 2 Sw. & Tr. 622.

(2) 2 Sw. & Tr. 625.

(3) 3 Sw. & Tr. 165; s.c. 32 Law J. Rep. (N.S.) Prob. M. & A. 25.

pronounced on the 1st of May, 1868. The Queen's Proctor subsequently intervened, but the intervention failed, and the decree was made absolute. The respondent afterwards intermarried with the co-respondent, an officer in the army. On her marriage with the petitioner, her father settled a sum of 3,000*l.*, the first life-interest being given to the respondent, the second to the petitioner, the fund ultimately to go to the children of the marriage, of whom there were three—all girls and young. The matter now came before the Court on the petition of Mr. St. Paul that the settlement might be varied either by giving him one-third and the children two-thirds of the income derived from the fund, or applying the whole income to the maintenance and education of the children. The conduct of the respondent was bad, and the petitioner, an attorney by profession, had no property of his own.

*Dr. Deane* (with him *W. G. Harrison*), in support of the petition, referred to *March v. March and Palumbo* (1).

*Pritchard*, for the respondent, submitted that to make either order would go far beyond the principle laid down in *March v. March and Palumbo* (1). As in that case so here also, the whole property came from the respondent's friends. The first object of the settler was her support, and it might happen that she would be left unprovided for by her existing husband.

*Cur. adv. vult.*

On the 7th of June judgment was given as follows—

**LORD PENZANCE.**—The Court took time to consider this case with a view to determining what should be done by way of alteration of the settlements. Alternative propositions were laid before the Court by the learned counsel for the petitioner, the husband. One was to the effect that a certain portion of the wife's property should be made over to him, and the remainder to the children; the other was, that the whole of it should be made over to the children.

The property, which consists of 150*l.* a year, was settled by the wife's father at the time of the marriage; the wife was given the first life-interest in it, after that a life-interest to the husband, and then to the children. The circumstances of the case disclosed the worst possible conduct on the part of the wife. She formed an intimacy with the co-respondent, deceiving her husband as to its true character; she treated him with the greatest ignominy and contempt, and finally she went away with the co-respondent, whom she has since married. Therefore, the Court has no hesitation whatever in dealing with this sum of 150*l.* a year brought into settlement by her father, in such a way, during her life, that no portion of it shall go to her. But when the question arises whether any part of it shall be given to the petitioner, seeing that the fund is not very large, and that there are three children, the proper conclusion appears to be that the whole of it should go to the children. The Court will make an order to that effect, and in accordance with the alternative proposition suggested by the petitioner. The Court, of course, only deals with the fund during the respondent's lifetime. When she dies, the petitioner will have a life-interest in it, and with that of course the Court would not interfere.

*Dr. Deane.*—A year's dividends are now due on the fund.

**LORD PENZANCE.**—The order will extend to all dividends now due and receivable by the trustees.

[His Lordship, on reconsideration, doubted whether he had power to deal with the dividends in arrear. The order was, in consequence, limited to "income accruing from and after the date of the order."]

*Order accordingly.*

Attorneys—Purkis & Perry, for petitioner; Clark, Woodcock & Ryland, for respondent and co-respondent.

(1) 36 Law J. Rep. (N.S.) Prob. & M. 28; s. c. Law Rep. 1 P. & D. 440.

MATRIMONIAL. }  
 1870. } SYKES v. SYKES AND SMITH.  
 June 7. }

*Divorce—Settlements—Covenant by Father of Petitioner to pay Respondent an Annual Sum on Petitioner's Death—Power to Deal with—22 & 23 Vict. c. 61. s. 5.*

*On the marriage of the parties, the father of the petitioner covenanted to pay to the respondent the annual sum of 100l. after the death of the petitioner. The marriage was dissolved by reason of the respondent's adultery. The Court ordered that the money should be applied for the benefit of the child of the marriage, but held that it had no power to deprive the respondent of her right under the covenant on the death of the child.*

This was an application on behalf of the petitioner, in whose favour the Court had made the decree absolute dissolving the marriage, on the 25th of January, 1870, for an order confirming the registrar's report as to the alteration of the settlement, and to relieve the father of the petitioner from a covenant he had entered into on the marriage, "to pay to the respondent the annual sum of 100l. after the death of the petitioner, and during the joint lives of himself and the said respondent, or until the said respondent should marry again." There was one child of the marriage, a daughter, born in 1860. No question arose as to the alteration of the settlements proposed in the registrar's report.

*Dr. Tristram*, for the petitioner, asked that the money covenanted to be paid to the respondent by his father, might be applied for the benefit of the child, and that in the event of the death of the child during the respondent's life, it might go upon the trusts of the settlement as if the respondent were dead. He referred to *Calwell v. Calwell* and *Kennedy* (1); and *Gill v. Gill and Hogg* (2).

*Searle*, for the respondent.—There is no objection to the money being applied for the benefit of the child, but the Court has no power to deprive the respondent of her interest under the covenant after the death of the child.

- (1) 3 Sw. & Tr. 259.  
 (2) *Ibid.* 640; s.c. 33 Law J. Rep. (N. S.) Prob. M. & A. 43.

**LORD PENZANCE.**—The plain object of the legislature in enacting the section under which these applications are made, was that where a woman has committed adultery, the Court should have power to divert money, to which she may be entitled under settlement, from her for the benefit of the husband or child, but after they are dead, the Court can deal no longer with the settlements. The Court has no power to relieve the father of the petitioner from the obligation of the covenant. The application in that respect must be refused.

Attorneys—B. F. Watson, for petitioner; Cookson, Wainwright & Co., for respondent; Dawes & Sons, for co-respondent.

PROBATE. }  
 1870. } In the goods of E. S. HILL.  
 May 10, 17. }

*Administration (with Will annexed) de bonis non—American domicile—Grant in America to Person not entitled by English Law—American Grant followed.*

*A died domiciled in America, and by her will appointed B, her father, sole executor and residuary legatee. B died, leaving part of the estate unadministered. On the application of his executors, who were all domiciled in America, administration of the unadministered estate of A was granted to C by the Court in America. The Court, following the American grant, allowed a grant of administration (with the will annexed) of the personal estate of A in this country, to go to C.*

Eleanor Sarah Hill died, domiciled in America, in 1864, and by her will appointed her father, Thomas Finnimore Hill, sole executor and residuary legatee. He proved the will in America, and died in December, 1869, having executed a will in which he appointed Maria Frances Anderson, William McConch, and Horatio Gates (who were all domiciled in America) his executors. At their request letters of administration of the estate of his daughter, Eleanor Sarah Hill, left unadministered by him, were granted by the Court in America to the Rev. George Washington Anderson, the husband of Maria Frances Anderson. A representation to the estate of Miss



Hill in this country having become necessary, the executors of her father and executor, Thomas Finnimore Hill, executed a document in which they required that the grant in England might be made as in America to the Rev. G. W. Anderson.

*Dr. Spinks* (on May 10) moved the Court accordingly.

*Cur. adv. vult.*

LORD PENZANCE (on May 17).—A grant of administration of the estate of the deceased was made in America. The party who obtained that grant has applied for a grant in this country for the distribution of the English assets. The Court some time ago gave its adherence to the general principle, that when a person dies domiciled in a foreign country, and a party clothed with authority by the proper Court of that country to administer his estate comes to this country and applies for a grant, in order that he may administer the English assets, the Court, without further inquiry, should make the grant. In this case of *The goods of Eleanor Sarah Hill*, the property of which she died possessed in this country would form part of the estate of her father, her next of kin at the time of her death, and according to the English law of succession, in order to obtain those assets, it would be necessary to take out a grant to the father. It so happens—a mere incident in the case—that the law of America as regards succession coincides with the law of this country in that matter, and in order to obtain the estate of the deceased person in America, it was necessary to take out a grant to the father. Then arises the question, whether it is necessary to do so here. It seems to me that, if the general principle of following the foreign grant is worth preserving at all, it should be preserved in its integrity; and that being so, that I ought to shut my eyes to the ordinary course of succession here—to adopt the fact that a particular person is appointed the administrator of the deceased by the proper Court in America, and to acknowledge that fact as the basis of the grant in this country. The grant may go.

Attorneys—King & McMillan.

PROBATE. }  
1870. } *In the goods of J. E. O'LOUGHLIN.*  
May 31. }

*Will—Residue—Money resulting from "sale of effects."*

*The testator, in addition to specific bequests, gave to A, the only legatee named in the will, "also any money that may result from the sale of my effects after paying the few small debts that I owe":—Held, not to carry the residue.*

The testator executed a will in which he named no executor, and disposed of his property, with the exception of two articles of personal ornament, in the following terms:—"I leave whatever money remains at my agents, Sir J. Kirkland & Co., and Messrs. Cox & Co., to my cousin, Miss O'Loughlin; also any money that may result from the sale of my effects after paying the few small debts that I owe. I also wish her to get my watch." The whole property of the deceased consisted of money at his agents—241l. 5s. 3d., and effects worth 50l.

*Searle* moved the Court to grant administration, with the will annexed, to Miss O'Loughlin, as residuary legatee named in the will. He submitted that the words, "also any money that may result from the sale of my effects," were sufficient to carry the residue—*Campbell v. Prescott* (1).

LORD PENZANCE.—The word "effects," standing alone, will pass the residuary estate. The testator is here pointing to something that is to come from the operation of the sale, and I do not think I can hold that the words of the will pass the residue. You must cite the next of kin.

Attorney—F. S. Gosling.

MATRIMONIAL. }  
1870. } VIVIAN v. VIVIAN AND WATER-  
May 17, 31. } FORD (LESLIE intervening).

*Dissolution of Marriage—Shewing Cause against Decree Absolute—Power to Condemn Intervener in Costs*—23 & 24 Vict. c. 144. s. 7.

*The Court has no power to condemn in costs a person who enters an appearance and files affidavits in opposition to a decree nisi being made absolute, and afterwards abandons his opposition.*

In this case, after a decree *nisi* at the suit of the husband had been pronounced, Leslie entered an appearance, and filed affidavits, alleging material facts not brought before the Court, with the view of preventing the decree being made absolute. He subsequently withdrew his opposition, and the Court was moved to make the decree absolute.

Lord Penzance declined to make the decree absolute, and directed that notice should be given to the Queen's Proctor, in order that he might, if he thought fit, intervene.

Archibald (on May 17) appeared for the Queen's Proctor, and stated that, in the opinion of the Attorney General, there was no ground for the Queen's Proctor's intervention.

The Solicitor General (Sir J. D. Coleridge)—(Prentice and Dr. Swabey with him)—moved the Court to make the decree absolute, and to condemn Leslie in the costs of the intervention.

Sir J. Karlake and Dr. Tristram for the co-respondent.

Sir G. Honyman (Searle with him), for Leslie.—The Court has no power to condemn the intervener in costs—*Lautour v. Her Majesty's Proctor* (1).

LORD PENZANCE made the decree absolute, and took time to consider the question of costs.

*Cur. adv. vult.*

LORD PENZANCE (on May 31).—The Court took time to consider whether it had the power, and if it had, whether it ought to condemn in costs the person

(1) 10 H. L. Cas. 685; s. c. 33 Law J. Rep. (N.S.) Prob. & M. 89.

who appeared and filed affidavits with the view of preventing the decree *nisi* being made absolute. The interference turned out to be founded on charges which could not be maintained. The effect of such interference was to delay the petitioner's decree, and therefore I have no doubt that if it lay in the discretion of the Court the intervener ought to be condemned in costs. But it was argued that the Court has no power to condemn the intervener in costs, and 23 & 24 Vict. c. 144. s. 7, on which the interference of third parties is founded, was referred to.

Now, by that section, no provision is made for the payment of costs by either side, except as regards the Queen's Proctor, when he intervenes in his official character and charges collusion, who, if he succeeds in proving the charge, is entitled to costs. On the other hand, there is the 51st section of 20 & 21 Vict. c. 85, which gives the Court unlimited discretion on the subject of costs, and looking at that section by itself, I should be inclined to conclude that the intention was to permit the Court to condemn in costs any person who took part in proceedings before it, and who it thought ought to be so condemned. But the case of *Lautour v. Her Majesty's Proctor* (1) appears to me to be antagonistic to that conclusion. I have read it with great care, and I can see no way of escaping from the conclusion that that case decided that where the Queen's Proctor intervenes simply as one of the public, as was done in this case, the Court has no power to give costs on either side. The language of the noble and learned Lord by whom the judgment was moved is distinct upon the point. He says, "The Queen's Proctor, therefore, I submit to your Lordships, must be treated as one of the public coming in to bring before the Court material facts for the Court's information, which had not been presented to it either by the petitioner or by the respondent. But I think the latter part of the section is not so worded as to take in the case of the Queen's Proctor acting merely for the purpose of bringing material facts before the Court" [which is what has been done in this case], "and that this Court has no power to give the costs of his so doing

under and by virtue of the authority contained in that section." I feel myself bound by that decision, and I think it right to adhere to it, more especially as there would be no appeal from my decision if I were now to condemn the intervenor in costs.

Attorneys—Lanfear & Stewart, for petitioner;  
Duncan & Murton, for respondent and co-respondent;  
White, Broughton & White, for intervenor.

PROBATE }  
1870. } *In the goods of ANDERSON.*  
Feb. 8. }

*Probate—Two Wills—Codicil by Mistake referring to First Will—Probate of Second Will granted—1 & 2 Vict. c. 26.*

*A testator executed a will on February 13th, 1864, and another, on June 24th, 1865, revoking all former wills. He afterwards executed a codicil which purported to be a codicil to his will dated February 13th, 1864, and after devising some property confirmed his said will. The solicitor who prepared the codicil had inserted the date of the first will under the supposition that it was the last will. There was nothing in the codicil which shewed an intention to revive the first will:—Held, that the second will and codicil were entitled to probate.*

George Anderson, deceased, on the 13th of February, 1864, duly executed a will, and on the 24th of June, 1865, he duly executed another will revoking former wills. On the 21st of June, 1869, he duly executed a codicil which commenced thus: "This is a codicil to the last will of me, George Anderson . . . Whereas I have in my will dated the 13th day of February, 1864, given and devised (among other things) all my real estate at Keelby, which was devised to me by my father, unto my son, George Anderson, his heirs and assigns for ever. And whereas since the date of my said will, my said son has departed this life. Now I do declare this to be a codicil to my said will, and do hereby revoke the said devise, so far and so far only as regards the house and premises in which I now reside." The codicil then devised the said house and premises to the

testator's daughter, charged with the payment of 550*l.*, and concluded: "In all other respects I ratify and confirm my said will."

Both the wills devised to the testator's son, George Anderson, the real estate at Keelby devised to the testator by his father. The testator's son, George Anderson, died after the date of the second will. Both the wills were prepared by Messrs. Marris & Smith, solicitors, and were deposited by them in an iron chest. In June, 1869, the testator sent for Mr. Marris, and gave him the following instructions for a codicil: "I wish for the house in which I live and the property connected therewith left by my will, to my late son, George Anderson, to be given to my daughter, for which she shall give an equivalent out of her other property." Mr. Marris, on his return home, prepared the codicil, and in order to insert the date of the will, told one of his clerks to get the will of George Anderson out of the will-chest. The clerk by mistake brought the will of February 13th, 1864, and that date was inserted in the codicil under the supposition that it was the date of the last will.

*Dr. Tristram* moved the Court to decree probate of the will of June 24th, 1865, and of the codicil of June 21st, 1869. He cited *In the goods of Steele* and *In the goods of Wilson* (1).

**LORD PENZANCE.**—The Court has in this case to decide whether, under the words of the Wills Act, the codicil shews an intention to revive the first will, and whether the Court can go into evidence, shewing that a blunder was made in the codicil as to the date of the will. On looking at the codicil, I cannot find in it any intention to revive the first will. It alludes to the death of the testator's son which occurred after the second will.

I think there was clearly a mistake as to the date of the will intended, and therefore, on the authority of the cases cited, I grant probate of the second will and the codicil.

Attorneys—Matthews & Greetham.

(1) 37 Law J. Rep. (N.S.) Prob. & M. 72; s. c. Law Rep. 1 Prob. & D. 576.

MATRIMONIAL. }  
 1870.  
 May 31. } MYCOCK v. MYCOCK.  
 June 14. }

*Dissolution of Marriage—Charges Proved—Alteration of Prayer of Petition—Right of Respondent to oppose.*

The wife petitioned for a dissolution of her marriage, by reason of the husband's adultery and cruelty, and proved both charges. The decree nisi was suspended at her request, and subsequently she asked to be allowed to amend the petition, by substituting a prayer for judicial separation. The respondent opposed the alteration, and alleged that the petitioner herself had been guilty of adultery. The Court granted liberty to the respondent to file affidavits in support of the charge; and no affidavits being filed, allowed the petition to be amended as prayed.

This was a petition by the wife for dissolution of her marriage, by reason of the adultery and cruelty of the husband. It was heard on the 12th of May last. The Court held that the petitioner had proved both charges, but suspended its decree at her request.

Dr. Spinks (on May 31) moved the Court to allow the petitioner to alter the prayer of her petition, and to decree to her a judicial separation from the respondent.

Dr. Deane (with him Dr. Swanbey), for the respondent, asked that the matter might be adjourned for a fortnight. The respondent had received information that the petitioner herself had committed adultery, and if that were proved the petition should be dismissed.

Dr. Spinks submitted that the respondent was not entitled to resist the application, and that if he were, no ground was shewn for delay.

LORD PENZANCE.—The adultery of the petitioner would be clearly a bar to her prayer for judicial separation. I ought not, therefore, precipitately to alter the character of the suit, seeing that possibly in doing so I may do injustice to the other side.

No affidavits were filed by the respondent in support of the suggestion of the petitioner's adultery; and

Dr. Spinks (on June 14) renewed the application for an alteration of the prayer of the petition. He questioned whether the Court had power to do so, and referred to the 31st section of the Divorce Act.

[LORD PENZANCE.—Is the Court bound to dissolve the marriage against the woman's consent?]

No; but she may have the petition dismissed.

LORD PENZANCE.—I think I ought to allow the petitioner to amend her petition, by asking for the less remedy of judicial separation.

*Motion allowed, with costs.*

Proctor—A. Ayrton, for petitioner.  
 Attorneys—Gregory, Rowcliffes & Rawle, for respondent.

MATRIMONIAL. }  
 1870. } CHAMBERS v. CHAMBERS.  
 March 1. }

*Suit for Restitution—Custody of Children—Jurisdiction—20 & 21 Vict. c. 85. s. 35.*

The Court has no power, in suits for restitution of conjugal rights, to make any order as to the custody of the children of the marriage.

This was a suit, promoted by the husband, for restitution of conjugal rights.

Bayford, for the petitioner, moved the Court to order that the two children of the marriage be handed over to the custody of the petitioner until further order.

Inderwick, for the respondent, submitted that the Court had not the power to make the order, and referred to section 35 of the 20 & 21 Vict. c. 85.

LORD PENZANCE.—The section referred to carefully enumerates the cases in which the Court may act in respect of the custody of children, namely, suits for judicial separation, nullity of marriage, and dissolution of marriage. It says nothing about suits for restitution of conjugal rights, and the Court is therefore without authority in the matter.

Proctors—Brooks & Dubois, for petitioner.  
 Attorney—W. B. Brook, for respondent.

MATRIMONIAL.  
1870.  
June 2.

MORDAUNT v. MORDAUNT,  
COLE AND JOHNSTONE.\*

*Dissolution of Marriage—Insanity of Respondent when cited and subsequently—Power to stay Proceedings.*

In a suit for dissolution of marriage on the ground of the wife's adultery, the respondent having been at the time of the service of the citation and having since continued unfit from mental incapacity to answer the petition and duly instruct her attorney, the Judge Ordinary made an order staying further proceedings until she should recover. Upon appeal to the full Court,—Held, by the Judge Ordinary and Keating, J., that the insanity of the respondent, so long as it should continue, would be a bar to the suit, and therefore that the order ought to be affirmed.

Held, by Kelly, C.B., that the Court had power only to stay the proceedings so long as there might be a reasonable probability that the respondent would recover, but that when her recovery became hopeless the petitioner ought to be allowed to proceed, and therefore that the order ought to be rescinded.

This was an appeal against an order made by the Judge Ordinary staying proceedings in the suit. Sir C. Mordaunt, on the 30th of April, 1869, filed a petition for a divorce on the ground of the alleged adultery of the respondent with the co-respondents, and the petition and citation were duly served on the respondent. Citations were also served on the co-respondents, who appeared and filed answers denying the alleged adultery. On the 7th of May, 1869, a summons was taken out calling upon the petitioner to shew cause why all proceedings in the suit should not be stayed, and the time for entering an appearance and filing an answer on behalf of the respondent should not be extended until she was in a sound state of mind. On the 27th of July, the summons was heard on affidavits, and the Judge Ordinary made an order that Sir T. Moncreiffe, the father of the respondent, should appear as her guardian *ad*

\* Before Kelly, C.B., Lord Penzance, and Keating, J.

NEW SERIES, 39.—PROB. AND M.

*litem* for the purpose of setting up her insanity. Sir T. Moncreiffe accordingly appeared and alleged that at the time when the citation was served the respondent was not of sound mind, and that she had never since been of sound mind. The petitioner took issue upon this allegation, and the issue was tried before the Judge Ordinary by a special jury, who, on the 25th of February, 1870, found that the respondent on the 30th of April, 1869, was in such a condition of mental disorder as to be unfit and unable to answer the petition and to duly instruct her attorney for her defence, and that she had ever since remained, and still remains, so unfit and unable.

On the 8th of March, 1870, the Judge Ordinary made the following order:—

"Upon hearing counsel for the petitioner and for Sir Thomas Moncreiffe, the guardian *ad litem* of the respondent, I do order that no further proceedings be taken in this suit until Lady Mordaunt recovers her mental capacity, and that the petitioner be at liberty to apply to the Court whenever he is able to affirm the respondent's recovery." (1)

(1) Lord Penzance, upon making the order, gave a written judgment, in which, after stating that it must be assumed as a fact that Lady Mordaunt, from the time the petition was served, had been in a state of mental incapacity to answer it, proceeded thus:—

"It is now contended on the one side that this circumstance forms no reason for further delaying the suit, and on the other that it forms a permanent bar to it. With the exception of the case of *Bawden v. Bawden*, 2 Sw. & Tr. 417; s. c. 31 Law J. Rep. (N.S.) Prob. M. & A. 94, in which Sir C. Cresswell permanently stopped a suit by a husband against an insane wife on the ground of her insanity, these questions are, I believe, entirely new. I think, therefore, counsel have done right in determining not to argue them in chambers, or even in Court before a single judge, but to reserve the argument for the full Court. It is for the purpose of formally founding this appeal to the full Court that they ask an order from me to-day. For this purpose it signifies little, perhaps, what order I make, but there is a consideration which has been constantly present to my mind throughout these proceedings, and which has not been hitherto brought into view. It is the possibility that Lady Mordaunt may recover her faculties, say within a year, although this is, I fear, less likely now than it was in July last, when the question of her mental condition first arose. If the testimony of the medical men at the trial is to be relied on, persons suffering from puerperal

Against this order the petitioner appealed.

The grounds of appeal stated in the petitioner's case were—

"1. The respondent's insanity at the time of the service of the citation is not a bar to the further prosecution of the suit.

"2. The respondent's insanity, though of a permanent character, is not a bar to the further prosecution of the suit.

"3. It does not appear, from the evidence given at the trial or otherwise, that there is any prospect of the respondent's recovery."

insanity for the most part recover within a year, some within eighteen months, and some never. It was therefore extremely probable, at the outset, that the lady, if deranged, would before long cease to be so, and there is some not unreasonable hope of her recovery still. Now whatever be the case in reference to permanent insanity, whether it ought to bar the suit or not, it may, I think, with some force, be argued that until all well-founded expectation or fair hope of the respondent being able to answer the petition be dispelled, the petitioner ought, for a reasonable time at least, to be forbidden to proceed without that answer. The hardship inflicted on a woman who has been temporarily deranged, and who on returning to her senses should find herself to have been divorced without defence is incomparably greater than any injury resulting from the delay in getting quit of an alleged adulterous wife, which her mental condition may have forced upon her husband. The possible cessation of the mental malady materially affects the main question looked at on either side. For if it be assumed as a general proposition that the insanity of the respondent ought not to be a bar to the petitioner's remedy, it would seem still reasonable that this suit should not be pressed during her temporary derangement. On the other hand, if it be declared that a divorce, involving the *status* of the respondent, ought not to be decreed during that respondent's insanity, it is reasonable that the petition should not be wholly dismissed, but only stayed until the respondent (if ever) recovers. In either view of the case, it would seem that some delay must be granted if the insanity is proved, unless, indeed, it is at the same time proved that, so far as medical experience goes, it is incurable and permanent. The order I propose to make is this [his Lordship read the order]. In making this order I do not desire to express any opinion until the case has been argued as to the effect which permanent insanity of the respondent might have in permanently staying the petitioner's suit. So far as this order involves that question, I must be taken as not expressing any opinion of my own, but only as following (according to the usual practice) the decided case of *Bawden v. Bawden*, leaving the propriety of that decision to be settled by the Court of Appeal."

The reason given in the case of the guardian *ad litem*, for affirming the order, was—

"As long as the respondent remains in such a condition of mental disorder as to be unable to answer the petition and to instruct her attorney for her defence, such mental incapacity constitutes a bar to the further prosecution of the suit."

The question was argued on the 27th and 28th of April, 1870.

*Ballantine, Serjt., Dr. Spinks, and Inderwick* for the petitioner.—The order ought to be rescinded. It is founded on the assumption that the insanity of the respondent, so long as it continues, is a bar to further proceedings, and therefore, if incurable, it would be a permanent bar. The Court in its discretion would, no doubt, in analogy to the practice of Courts of Common Law in the case of the illness of a material witness, have power to stay the suit for a reasonable time, if satisfied that there was a reasonable probability of the respondent's recovery, but not otherwise. The only authority upon the question directly in point is the case of *Bawden v. Bawden* (2), in which Sir C. Cresswell, on the ground of the respondent's insanity, stayed a suit for dissolution of marriage by a husband; but the question was not fully argued, and the decision was founded on *King v. King*, an unreported decision of Sir H. J. Fust.

[LORD PENZANCE.—Dr. Bayford has communicated to me the substance of the case of *King v. King*. Adultery was charged in 1839, 1840, and 1841, and in an action for crim. con. 100*l.* damages were recovered. On the part of the wife incipient insanity in 1837 was alleged, which became undoubted insanity in 1841, the wife having latterly been confined in a lunatic asylum. Sir H. J. Fust directed the case to stand over, in order to consider the power of the Court to make a decree against a lunatic. I have seen a note of the judgment, and it only shews Sir H. J. Fust entertained a doubt upon the question.]

In America the question arose in the case of *Mansfield v. Mansfield* (3). That

(2) 2 Sw. & Tr. 417; s. c. 31 Law J. Rep. (N.S.) Prob. M. & A. 94.

(3) 13 Massachusetts Rep. 29.

was a suit by a wife for a divorce on the ground of adultery. The husband had not appeared. After evidence was given of the adultery, it was suggested to the Court that the husband was insane. The Court thereupon set aside the default, remarking that the wife, if so advised, might procure the appointment of a guardian to her husband, upon whose appearance proceedings might be continued, and on sufficient cause being shewn a divorce obtained. The point does not appear to have been raised again.

[LORD PENZANCE.—It would be material to know if the law of Massachusetts allows recrimination.]

In America recrimination is allowed. In *Parnell v. Parnell* (4), a suit for a divorce *a mensâ et thoro* by a lunatic was held maintainable. The principle of that decision is applicable to a suit for dissolution of marriage, and if a lunatic can be a petitioner in such a suit, why cannot he be a respondent? If he cannot, there would be this anomaly, that a lunatic might petition for a divorce, and recriminatory charges could not be made against him because he could not answer them. In *Beauraine v. Beauraine* (5), which was a suit for a divorce *a mensâ et thoro* by a wife against her husband, a minor, Lord Stowell ordered the husband's father to appear as guardian *ad litem*, saying it would be a denial of justice if minority protected a man in outrageous treatment of his wife. The father refused to appear as guardian, and it was subsequently held by the Court of Chancery that he could not be compelled against his will to act as guardian. If no one volunteered to act as guardian, the Court might surely appoint a guardian *ad litem*, or the Court of Chancery might be asked to appoint a committee for the purpose of defending the suit. Upon principle, and in analogy to the practice of Courts of Law and Equity, there is no reason why a lunatic should not be a respondent in a suit for divorce. Marriage is essentially a civil contract, and adultery a breach of it. At law a lunatic is liable on a contract or for a tort—*Baxter v. The Earl of Portsmouth* (6), *Bac. Abr. Idiots*

(E); *ibid.* Trespass (G), note to *Borradaile v. Hunter* (7); in an action of *quare impedit*, *Tyrell v. Jenner* (8); he may be arrested and formerly would not be discharged on filing common bail—*Kernot v. Norman* (9), *Nutt v. Verney* (10); and he is liable to an action for false representation—a quasi-criminal offence.

[KELLY, C.B.—And also for a libel.]

In *Owen v. Davies* (11), a specific performance of a contract entered into by a defendant, who afterwards became a lunatic, was decreed. A lunatic also may be made a bankrupt, whereby his *status* is affected, provided the act of bankruptcy was committed during a lucid interval—*Anon* (12). All the decisions on the subject in Courts of law and equity shew that whatever protection is given to lunatics, the rights of other persons already accrued are not affected by the lunacy.

[LORD PENZANCE.—There is this difficulty, which I should wish to hear argued—the power of obtaining a divorce is subject to certain conditions, in which the legislature intended that the public as well as the respondent should have an interest. The Queen's Proctor is empowered to bring evidence before the Court, shewing that any one of those conditions has been violated. A breach of them can in many cases be known only to the respondent. She ought, therefore, to be in a position to give instructions for her defence. Further, the respondent, by a recent Act of Parliament, is rendered a competent witness, and whilst she is insane the Court would be deprived of her evidence.]

The wife's uncorroborated evidence is seldom relied on. Other evidence is generally obtainable, which, if it does not conclusively establish a breach of these conditions, might furnish such probability of it that the Court would delay the suit for further information; or the Queen's Proctor might intervene if he saw any suspicious circumstances. The fact that the respondent is a competent witness in this suit is a mere accident, as the Act by which

(4) 2 Hag. Cons. 169.

(5) 1 Hag. Cons. 498.

(6) 5 B. & C. 170.

(7) 5 Man. & G. 670.

(8) 6 Bing. 283.

(9) 2 Term Rep. 390.

(10) 4 Term Rep. 121.

(11) 1 Ves. sen.

(12) 13 Ves. 500.

she was rendered competent was not passed until after the commencement of the suit.

Lunatics have frequently been suitors in this Court upon the question of the validity of a marriage. In *Hancock v. Peaty* (13), the proceedings were instituted by the guardian of the petitioner, who was a lunatic, and the marriage was annulled. In the Court of Arches, Michaelmas Term, 1837, in an unreported case, a decree of nullity was pronounced on the ground of insanity, where the respondent was insane during the suit. Suppose a suit for divorce on the ground of the wife's adultery were instituted by the guardian of a lunatic, that the wife deny the charge and recriminate, could the Court, after allowing the husband to charge the wife, stay the proceedings because the husband could not answer?

[LORD PENZANCE.—The petitioner might be deprived of part of his evidence, but the Court would not stay the proceedings.]

The Court sometimes pronounces a decree on the prayer of the respondent. Would the Court refuse to do so when the petitioner was a lunatic? In *Talbot v. Talbot*, on the second reading of a bill for a divorce in 1856, there was some question as to the effect of confessions of the wife, alleged to have been made during insanity. From a report of that case it does not appear to have been suggested that a state approaching fatuity would be a bar to proceedings. During these proceedings it has been suggested that a suit for a divorce, inasmuch as it affects the *status* of the parties, is analogous to a criminal proceeding, and that as a person charged with a criminal offence, if he becomes insane, cannot be called on to plead (14); in analogy to that practice, the proceedings in this suit ought to be stayed. But there is no such analogy. By the law of England adultery is not a crime. In criminal cases the law requires the accused to plead personally in Court. The object of a criminal proceeding is the punishment of the offender with a view to deter others, and not to afford redress or relief to the injured party, whilst the object of a suit for divorce is to get

redress for an injury sustained by the petitioner. In the former case neither the public nor the prosecutor is injured by the accused not being tried. In the latter the petitioner may be seriously injured by a stay of proceedings.

*Dr. Deane, Archibald, and Searle*, for the respondent.—It is a fallacy to treat marriage as an ordinary contract. It is a contract *sui generis*, conferring a *status* upon the parties to it, and differing in some respects from all other contracts (see *Storey's Conflict of Laws*, pp. 170 & 171, quoting a judgment of Lord Robertson). Again, a divorce, though civil in its nature, is criminal in its effect, as it changes the *status* of the parties—*Bishop on Marriage and Divorce*, 479. It would be contrary to natural justice if a decree were made affecting the *status* of a party who is neither actually nor constructively before the Court—*Buchanan v. Rucker* (15), *Reynolds v. Fenton* (16), and other cases cited in the note to the *Duchess of Kingston's case* (17). It is true that the respondent has been served with process, but she cannot be said to have been served in any sense in which she could deal intelligently with it. Service on a lunatic is, as was said by Sir C. Cresswell, a meaningless formality. No case can be cited in which the personal *status* of a lunatic has been dealt with. The Courts of Law and Equity deal with property but not with personal *status*. In *Woodgate v. Taylor* (18), by order of the Lord Justices, the committee of a lunatic instituted a suit for judicial separation. It does not, however, follow that the committee of a lunatic could maintain a suit for dissolution of marriage. A decree of judicial separation only separates the parties temporarily, and contemplates reconciliation, whilst a decree of dissolution permanently alters the *status* of the parties. Further, the inability of a lunatic petitioner to rebut recriminatory charges, which, if established, would have more serious consequences than in a suit for judicial separation, is another argument

(15) 1 Campb. 63.

(16) 3 Com. B. Rep. 187; s. c. 16 Law J. Rep. (n.s.) C.P. 15.

(17) 2 Smith, leading cases, 592.

(18) 30 Law J. Rep. (n.s.) Prob. M. & A. 197.

(13) 36 Law J. Rep. (n.s.) Prob. M. & A. 57; s. c. Law Rep. 1 Prob. & D. 3.

(14) 3 Instit. 6; 1 Hale P. C. 33 & 34.



against such a suit. A suit for dissolution of marriage is analogous to a criminal proceeding, and by analogy to the practice of criminal Courts, such a suit ought not to be maintainable against a lunatic. According to Sir J. Hawles, Solicitor General, temp. Will. 3, in the case of *Sir W. Bateman* (19), the reason why a lunatic cannot be tried is because he is disabled from making his defence, since there might be circumstances which would prove his innocence unknown to those who conduct his defence, and only within his own knowledge. For the same reason the lunacy of a respondent ought to be a bar to a suit for a divorce. For if sane, he or she might explain matters apparently inconsistent with innocence, or set up some defence under the statute.

[KEATING, J.—Has it ever been held that insanity at the time of the adultery is a bar to a suit for divorce?]

Not in this country. In Alabama and Massachusetts it has been held that it is a bar; in Pennsylvania that it is not. As to other suits, the Court is bound to follow the practice of the Ecclesiastical Courts, and it may be that such suits may be maintained by and against lunatics, but a suit for a divorce is the creature of the Divorce Act, and unless it is clear from the terms of the Act that a divorce may be maintained by and against a lunatic, the Court ought not to allow such a suit to proceed. There are provisions in the statute which shew such a suit can only be brought by and against a sane person. Thus the 41st section requires the petitioner to make an affidavit verifying the petition, and the rules made under the Act require an affidavit from the respondent verifying matter in the answer other than a simple denial of allegations in the petition. Such an affidavit can only be made by a sane person, and there is no provision for an affidavit being made except by the parties. If the legislature had intended that a suit for divorce should be maintained by or against a lunatic, it would have provided some machinery for the protection of the lunatic.

[KELLY, C.B.—The statute requiring an affidavit to be made by the petitioner, and

there being no power for the guardian of a lunatic to make such affidavit, it would seem that the guardian of a lunatic cannot institute a suit.]

(*Dr. Spinks*.—In *Hancock v. Peaty* (13), the affidavit in support of the petition was made by the guardian of the lunatic.)

[KELLY, C.B.—That may have been done *per incuriam*. LORD PENZANCE.—The rules have several times been altered, and if it should be held that the suit ought not to be stayed, a rule may be made to meet the difficulty.]

It does not follow, as contended, that if this order is valid the respondent in a suit for divorce by a lunatic (assuming such a suit maintainable) could not plead recrimination. There would be no hardship on the lunatic if he institutes proceedings that recrimination should be allowed as a defence, though the Court might refuse to found any sentence upon the answer. As to the hardship which, it is said, this order if sustained would in fact inflict on the petitioner, doubtless it would be hard that a husband should be unable to get rid of a guilty wife in consequence of her insanity, but the hardship would be far less than that inflicted on an innocent wife if a divorce was obtained against her in consequence of her inability to defend herself. If the adultery of a lunatic wife could be clearly established, there is nothing to prevent the husband getting the marriage dissolved by an Act of Parliament. As to *Parnell v. Parnell* (4), that case is relied on as shewing that an insane person can institute a suit, but that was only a suit for judicial separation, and one of the reasons given by Lord Stowell for allowing it to proceed, was that the wife could sustain no injury, since the lunatic, if he recovered, would have power to condone. *Beauraine v. Beauraine* (5) was a suit by a minor. There is no analogy between such a case and a suit by a lunatic. In *Talbot v. Talbot* the question of insanity was only raised incidentally in considering the effect to be given to certain confessions. They cited *Beverley's case* (20), *Molton v. Camroux* (21), *Bac. Abr.*

(20) 4 Rep. 174.

(21) 2 Exch. Rep. 487; s. c. 18 Law J. Rep. (n.s.) Exch. 68; in error 4 Exch. Rep. 17; s. c. 18 Law J. Rep. (n.s.) Exch. 356.

(19) 4 St. Tri. 474.

Idiot (F), 1 *Hale, P. C.* p. 33, *Bishop on Marriage and Divorce*, p. 419, *White v. White* (22), *Hall v. Hall* (23).

*Ballantine, Serjt.*, in reply.—The Court can appoint a guardian to a lunatic. The rules of the Divorce Court provide for the appointment of guardians to miners, although the statute is silent on the point. It is said that *Parnell v. Parnell* (4) was only a suit for a divorce *a mensâ et thoro*, which is less serious in its effect than a suit for dissolution, but Sir C. Cresswell, in *Bawden v. Bawden* (2), said that a suit for dissolution against a lunatic was different from a case where the petitioner was a lunatic, thus assuming that a suit for dissolution of marriage might be maintained by a lunatic. Nor is it true that a decree of judicial separation does not affect the *status* of the parties, for a woman judicially separated is for all purposes, except marrying again, a *feme sole*. There is no analogy between a suit for divorce and a criminal proceeding. This Court is a Court of purely civil jurisdiction. Proceedings in it in their nature and object are essentially different from those of a criminal proceeding. In a criminal Court means would be taken to prevent injustice by incapacity of a material witness on behalf of the prisoner. But in such a case the Court would only grant a reasonable delay, and if the witness were permanently insane the trial would not be postponed indefinitely. The order ought to be rescinded, leaving it open to the respondent's guardian to apply for a further postponement if the respondent is likely to recover within a reasonable time, or if there should be *prima facie* ground for believing that any of the conditions or discretionary bars specified in the Divorce Act can be proved.

*Cur. adv. vult.*

The Court differing in opinion, the following judgments were now delivered:—

KEATING, J.—(after stating the facts, continued)—The question is whether the order should be rescinded or varied, or in other words, whether proceedings upon a charge of adultery, with a view to a divorce, can or ought to be continued

against a respondent who at the commencement of the suit was, and still is, wholly unable and unfit, through mental incapacity, to defend herself, so long as that mental incapacity continues; and I am of opinion that the order made ought not to be rescinded or varied. If this were a criminal proceeding, or a proceeding *in pœnam*, properly so called, of course there could be no doubt upon the subject. Mental incapacity not only excuses the commission of what otherwise would be crime, but is a bar at every stage to any proceeding on the part of the Crown in respect of it. It excuses the act charged as crime, because the essence of crime is the *mens rea*, which could not exist in such a case, and it is a bar to criminal proceedings in consequence of want of capacity on the part of the accused to understand the charge or make a defence to it—See the rule and the reason for it well stated in 4 *Broom and Hadley's Commentaries on the Laws of England*, p. 22, citing *Hale, P.C.*, 14. Now, it is true that by the law of England adultery is not the subject of indictment—2 *Co. Inst.* 488, and *Galizard v. Rigault* (24)—and therefore cannot with strict technical accuracy be termed a crime; yet the charge, both in its nature and consequences, much resembles a criminal charge. Indeed, Mr. Emlyn, whose learning and ability are vouched by Mr. Hargrave in his preface to the second edition of the *State Trials*, p. 33, note H, expresses an opinion that it was indictable by our law, and cites authorities for his opinion. By the law of France it is punishable as a criminal offence, and we have the authority of Lord Holt in the case referred to (25) that it is considered as such in the Spiritual Courts. In divorce proceedings also in the House of Lords it appears to be so treated. In the *Duchess of Norfolk's case* (26) the entry is, "Upon reading the charge which Henry Duke of Norfolk hath exhibited against his wife, Mary Duchess of Norfolk, for the crime of adultery, it is ordered, &c." No case is to be found in the Ecclesiastical Courts where the question has arisen how far

(22) 1 Sw. & Tr. 591.

(23) 33 Law J. Rep. (N.S.) Prob. M. & A. 65.

(24) Holt's Rep. 598.

(25) *Galizard v. Rigault*, Holt's Rep. 598.

(26) 12 St. Tri. 890.

adultery to justify a divorce could be committed in the absence of the *mens rea*, but it seems clear that by the French law it is essential to the commission of the crime—*Gilbert, Codes Annotés*, par Sirey, *Code Pénal*, 336; and *Merlin*, 1 *Rep. Adultère*, n. 10. In America the decisions conflict upon the point—2 *Weaton's Com.* 82. How that question will be dealt with, should it arise in the Courts of this country, it is not necessary to anticipate; for, at all events, the nature of the offence charged seems to me to distinguish the proceedings in divorce essentially from those merely of a civil character, in which the object is the recovery of debt or damages for an injury to person or property—See *Bac. Abr. Trespass (G)*—but where the personal *status* of the defendant is wholly unaffected. In proceedings for a divorce, although the consequences to the party charged and found guilty are certainly not the same as in misdemeanour, yet in the case of a wife respondent they are so incalculably more terrible than fine and imprisonment, that, as argued by Mr. Archibald, it seems contrary to all sense of natural justice that a woman should be convicted of adultery, involving a change in her personal *status*, and that by a judgment *in rem*, without the fullest opportunity of making her defence. By analogy, therefore, to those principles which have been established in the administration of criminal justice in this country, it seems to me that the proceeding for a divorce for cause of adultery, although not strictly a criminal proceeding, is at least a proceeding *quasi in pœnam*, and ought to afford similar protection to parties accused.

But by far the most cogent reasons for supporting the present order are, in my opinion, to be found in the provisions of the statute itself upon which the jurisdiction of this Court is founded, and in order to appreciate their effect it is necessary to bear in mind that before the passing of the statute 20 & 21 Vict. c. 85, by the law of England marriage, when lawfully contracted, was an indissoluble contract. Unlike all other civil contracts, it could neither be put an end to by mutual consent nor by act or operation of law. The husband, whose wife had proved unfaithful, might, indeed, go into the Spiritual Court, and, upon

proof of adultery, without fault on his part, obtain a divorce *a mensâ et thoro*, and also bring an action for damages against the adulterer; but the marriage contract remained undissolved, nor could the parties during their joint lives marry again unless by special interference of the legislature. In that state of things the statute 20 & 21 Vict. c. 85, was passed, which for the first time gave to a Court of law the power to dissolve a lawful marriage, but only *sub modo*, and subject to certain conditions. The 27th section of that statute enables either party to present a petition for dissolution of marriage. The 28th section provides that the person charged with adultery with either party may be made co-respondent, and that either party may have the facts tried by a jury. Section 29 enacts that “upon any such petition for a dissolution of marriage it shall be the duty of the Court to satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or no the petitioner has been in any manner accessory to or conniving at the adultery, or has condoned the same, and shall also inquire into any counter charge which may be made against the petitioner.” By section 30, “in case the Court, on the evidence in relation to any such petition, shall not be satisfied that the alleged adultery has been committed, or shall find that the petitioner has been accessory to or conniving at the adultery of the other party to the marriage, or has condoned the adultery complained of, or that the petition is presented or prosecuted in collusion with either of the respondents, then in any of the said cases the Court shall dismiss the said petition.” The 31st section provides “that in case the Court shall be satisfied on the evidence that the case of the petitioner has been proved, and shall not find that the petitioner has been in any manner accessory to or conniving at the adultery of the other party to the marriage, or has condoned the adultery complained of, or that the petition is presented or prosecuted in collusion with either of the respondents, then the Court shall pronounce a decree declaring such marriage to be dissolved; provided always that the Court shall not be bound to pronounce such

decree if it shall find that the petitioner has, during the marriage, been guilty of adultery, or if the petitioner shall, in the opinion of the Court, have been guilty of unreasonable delay in presenting or prosecuting such petition, or of cruelty towards the other party to the marriage, or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse, or of such wilful neglect or misconduct as has conduced to the adultery." And the 43rd section enables the Court to have the petitioner examined and cross-examined on oath, if necessary, in order to obtain information with reference to the various matters upon which it is to satisfy itself, saving only the right of the petitioner to refuse to answer any question tending to prove his or her adultery. Now, it appears to me to be impossible to apply these provisions of the statute in the manner contemplated by the legislature when one of the parties is insane. The Court cannot pronounce a decree of divorce, unless satisfied, after inquiry, which it is bound to make, that none of the statutable impediments exist, yet the existence of those impediments, or of most of them, is peculiarly, and often exclusively, within the knowledge of the parties themselves. How, then, can it be supposed that the legislature contemplated such a suit proceeding during the insanity of one of the parties to it? Connivance, condonation, cruelty, desertion, wilful separation without reasonable excuse, wilful neglect or misconduct, conducing to the adultery, are all matters upon which it is the duty of the Court to satisfy itself, as to some absolutely, as to others if charged; but how are they ever to be supported, much less proved, when one of the parties is insane? Take the case of a petitioner. Is a petition for a divorce to be presented or prosecuted on behalf of a lunatic with a view to alter his or her personal *status* without his or her consent? Who can say that such a proceeding, if it could be taken, would necessarily be for his or her benefit or would be approved upon recovery? A proceeding for a judicial separation stands upon a totally different ground. It is temporary in its effect, and

always contemplates the possibility of re-union, and there certainly is authority for such a decree being made on the petition of the committee of a lunatic—*Woodgate v. Taylor* (18), where the distinction between judicial separation and divorce seems to have been present to the minds of the Lords Justices in making their order for proceedings. It is also to be observed as to that case that the attention of the Court does not seem to have been called to the provisions of the 41st section of the statute. But whatever may have been the case with reference to a petition, yet in the case of a respondent, although proceedings for judicial separation are not fenced round with all the statutable conditions applicable to a case of divorce, there is no instance to be found in which a decree for even a judicial separation has been made against a lunatic respondent, and there seems to be an additional objection to making such a decree in the fact that by a recent statute, 32 & 33 Vict. c. 68, he or she is made a competent witness, and has the right to give evidence in disproof of the charge of adultery. It would seem, therefore, extremely unjust to deprive the parties charged, of the right, without any fault on their part. It is not difficult to suppose many cases where suspicion of the gravest kind resulting from conversations, or letters, or entries, might be dispelled by a few words of explanation, which could only be given by the absent lunatic, or when a totally different complexion might be put upon facts, apparently of a highly criminating character, by the evidence of the party charged. I do not wish to attach undue importance to the fact that charge or counter-charge is, either by statute or rule, to be made upon the oaths of the parties, respectively, as perhaps the Court could, in furtherance of justice, relax the stringency of the requirements; but such a provision in the statute, in the case of a petitioner, tends at least to shew the legislature contemplated the parties being in a state of sanity. Neither does it seem to me that the argument used at the bar, that as the Court could pronounce a decree of divorce against a party not served, so it might do so in the case of a lunatic, avails much

to the case of the appellant. When such a decree is made, the Court is satisfied either that the party has gone away to avoid service, or may have had notice by means of advertisements or other notices directed to be given, whereas, in the case of an insane person, the Court knows that the party had not and could not have had notice, and cannot possibly defend himself, or herself, against the charge. The authorities upon this point are necessarily few, but what authority there is upon the subject is clearly in favour of the present order. In a case not reported, but furnished from the notes of the late Sir Herbert Jenner Fust, the question seems to have arisen whether a decree *a mensâ et thoro* could be made against a lunatic respondent. That learned Judge, expressing a doubt whether he could make such a decree, took time to consider. No judgment is known to have been given, nor is there any trace of such decree having been made. However, the question arose afterwards before the late Sir Cresswell Cresswell, in the case of *Bawden v. Bawden* (2), on a petition for a divorce under the present Act, and that eminent Judge, after taking time to consider, gave judgment that the proceedings should be stayed. Now, this decision is admitted to be in point, and indeed the present appeal is with a view to overrule that case, although in form it is directed against the order of the Judge Ordinary made upon its authority. In my judgment, however, that case was rightly decided. I do not refer to the cases of hardship suggested, quite as great on the one side as on the other, as it was admitted the case must be decided on other considerations. The order as made, stays the proceedings, until the petitioner, who has the custody of the respondent, can assert her recovery. Meanwhile, he is in the same position as he would have been in before the passing of the statute. The facts of this case are not before us, but should it upon those facts, in consequence of any peculiar hardship, be deemed one fit for legislation, of course there is nothing to prevent it. In my opinion the order of the Judge Ordinary was right, and the appeal against it ought to be dismissed.

NEW SERIES, 39.—PROB. AND M.

THE JUDGE ORDINARY (Lord Penzance).—The main question to which the insanity of the respondent gives rise is, whether the suit can be permitted to proceed to a decree against her so long as she remains insane. A suggestion has been made that the order now under appeal should be altered by staying the proceedings for a time until recovery shall be declared hopeless. An obvious objection to this course is, that the probability of recovery is a matter more of speculation than of definite conclusion. But it seems to me that the propriety of adopting it depends upon the legal effect of the respondent's insanity, so long as that insanity continues. If while the insanity continues the petitioner is entitled, nevertheless, to proceed to prove his case, it would still be right, in justice to the respondent, to stay the proceedings for a reasonable time, to take the chance of her recovery, before the charge is pressed against her. If, on the other hand, the true view is that no proof or decree can lawfully be made against her so long as she continues insane, there is no need, as it seems to me, for a stay of proceedings for any period short of her recovery, and no justification for the postponement of a decision on the main matter, which the parties have asked at our hands. The authority of this Court to entertain a suit for the dissolution of marriage is derived wholly and solely from the statute by which this Court was first instituted. The relief which the Court was then for the first time empowered to give in cases where the marriage vow had been violated is defined and regulated by the various provisions of that statute, and restricted by the conditions thereby imposed. The language that has been held in argument invites and provokes some consideration of the nature and extent of these various provisions. It has been argued that marriage is nothing but a contract, subject to all the legal incidents of an ordinary contract, and giving rise to the like legal remedies. From this position, if tenable, the conclusion would not be difficult that insanity in her who has broken the contract should be no bar to the remedy of him who complains of the breach of it. For the Courts of

K

Law and Equity have always, though in different ways, enforced remedies arising out of contract, notwithstanding the insanity of the defendant. But, is it true that marriage is an ordinary contract? Surely it is something more. I may be excused if I dwell somewhat on this matter, because I conceive it lies at the very root of the question in discussion. Marriage is an institution. It confers a *status* on the parties to it, and upon the children that issue from it. Though entered into by individuals, it has a public character. It is the basis upon which the framework of civilized society is built, and, as such, is subject in all countries to general laws, which dictate and control its obligations and incidents, independently of the volition of those who enter upon it. Marriage, moreover, has features which belong to no other contract whatever, and notably these two—it cannot be rescinded, even by the consent of both parties to it, and it is commonly contracted under the sanction of a religious ceremony. This, the leading feature of marriage, its indissolubility, was preserved by the law of this country up to the time that the statute constituting this Court passed into legislation. No matter how flagrantly the obligations of the contract had been violated on one side there was no right to a release from the corresponding obligations on the other. Cases of grievous hardship brought about a remedy by measures above and beyond the law for those who could afford to pay for them; but the essence of the marriage contract remained the same, and the bargain to live together for better and for worse continued to be one from which there was no voluntary retreat or legal escape. To what extent, then, did the legislature intend by the Divorce Act to break in upon the integrity of this system? It is worth while to examine this matter, for the power conferred by the Act of resorting to this Court has been treated in argument as if it were simply a new means of asserting a pre-existing right. According to this view the act of adultery is treated as conferring at once the right to a dissolution, and the Divorce Act only as furnishing the necessary machinery. But is this so? It appears to me that the new remedies,

like those of a more limited character accorded by the Ecclesiastical Courts, were granted, if I may use the expression, rather *ex gratiâ* than *ex debito iustitiæ*. The Divorce Act kept alive the restrictions under which the legislature in the case of divorce bills, and the legislature in the case of divorce suits *a mensâ et thoro*, had been used to act, and those restrictions plainly shew the spirit in which the relief was granted. It was a principle of universal application in the Spiritual Courts that a suitor who prayed for a relaxation of his marriage ties should come into Court with clean hands. It was further necessary that he should not, even in a moment of excitement, have pardoned his wife and taken her back to him. It was a further principle that he should be sincere in the grievance under which he professed to suffer. And, lastly, he was bound to be prompt, and not open to the charge of unreasonable delay. In a like spirit, a Divorce Bill, when passing through the House of Lords, was treated rather as a matter of general merits, laying the foundation for a measure of grace, than a mere investigation of delinquency, drawing after it an absolute right to redress. The entire conduct of the husband was submitted to review, the complaints and excuses of the wife were entertained, and the bill, which passed into a law only if the case were in all respects meritorious, was liable to be defeated in its last stages if the husband failed to restore an adequate part of the fortune, if any, that his wife had brought him. No doubt the breadth of this discretion in granting relief was much narrowed, and its limits defined when the dissolution of marriage was confided to the hands of a regular tribunal. Still a large discretion was left. The Court, under section 31, has the discretion to refuse a decree if the petitioner has been guilty of adultery, if he has been guilty of cruelty, if he has been fairly chargeable with unreasonable delay, if he has wilfully and without reasonable excuse separated himself from his wife, if he has deserted her, and lastly, if he has been guilty of any neglect or misconduct conducing to his wife's adultery. And here it is to be observed that the maintenance of these

restrictions and qualifications is treated by the legislature as a matter not merely of equity to the erring wife, but of public concern. The enactment which followed the Divorce Act made special provision to insure divorces not being granted when any of these imputations could be successfully made against the petitioner. It cast upon a public officer, the Queen's Proctor, the duty of intervening at any time, and bringing them to light, and even empowered individuals, whether interested in the matter or entire strangers to the parties, to do the like. It is only, therefore, if the petitioner is free from all reasonable complaint of misconduct himself that the legislature intended to release him from bonds in their terms and their nature permanent. The statute accorded to those to whose own conduct no blame could be imputed a relief from obligations voluntarily undertaken and still binding, but which the unprovoked misconduct of others had rendered a grievous and intolerable burden. But it did not, as it seems to me, intend to do more. It did not intend to affirm that adultery of the wife at once conferred upon the husband an immediate though defeasible right to have his contract of marriage dissolved, treating his release from the contract as a simple right growing out of the breach of it by the other party, and thus placing it on a level with a contract for the sale of goods or the hire of a ship. When the Court, therefore, is asked to deal with this question of insanity as courts of law would deal with a case of ordinary contract, the answer is that marriage is not an ordinary contract. When the analogy of legal remedies in other cases of contract is put forward for adoption, the answer is that the analogy does not exist. If it did, it would no doubt give a summary solution to all difficulties, but a rather startling one. A lunatic at common law is liable to be sued, and (until arrest was abolished) held to bail; just the same as a sane man. There is no need at common law for the appointment of a guardian or the nomination of any one to act in the lunatic's place; the suit proceeds in all respects as if the defendant were sane. If this Court, then, were to act in analogy with this system,

the petitioner would have only to prove service of the petition on his lunatic wife, and he might, without warning to her family or her friends, proceed to establish her guilt without danger of defence or recrimination. For these reasons, it appears to me that we must look elsewhere for the solution of the question at issue than to the analogy of ordinary remedies for the breach of ordinary contracts. And as it must be conceded that the true meaning of the legislature in the Divorce Act, if it can be arrived at, is that which ought alone to guide our decision, it is to the provisions of that Act that I again recur. It is to be observed, at the outset, that there are no words specially applicable to the case of lunacy either of the petitioner or the respondent. If suits were intended to be entertained by and against such persons it would be reasonable to look for some provisions by which their friends or relations might act for them and protect their interests. But there are none such, nor, indeed, any special provisions or machinery for the conduct of such suits. If the statute applies to lunatics at all, it deals with them in all respects like other persons. Accordingly the lunatic petitioner must present a petition, and accompany it by an affidavit sworn by himself as to the truth of its allegations. On this section 41 of the statute is express. The lunatic respondent, too, must be served personally with the petition, unless the Court dispense with it. Then the lunatic respondent is invited to recriminate, and submit the petitioner's matrimonial conduct to investigation. If she does this, the rules of the Court, as they stand at present, require that she should affirm the truth of the charges on personal affidavit. Any such charges the petitioner, whether a lunatic or not, has to meet, and the duty is by section 29 directly cast upon the Court of investigating all such countercharges. Now, so far as the mere machinery here indicated is concerned, its defects might, no doubt, be to some extent supplied by rules of Court. It is not, therefore, so much that the means of entertaining such a suit as this are beyond reach if it could only be made plain that the legislature so intended, as that the

absence of appropriate provision for lunatics in those parts of the Act which concern procedure tends to shew that the Act was not designed for any but sane suitors. But I pass to a more general view, and I ask myself the broad question whether, looking at the substance, rather than the form, of these remedies, they were intended for lunatic petitioners and lunatic respondents. I say lunatic petitioners as well as respondents, for there is no distinction made in the Act; the words throughout are quite general, and there is no middle ground between the two opposite opinions that these words include lunatics or exclude them altogether. Take the case of the lunatic petitioner first. Did the legislature really intend that while a man was out of his senses, either he or his friends should be at liberty to take legal proceedings to put away his wife? Surely such a matter as the divorce of his wife (perhaps the mother of his children) is one upon which he should be allowed himself to exercise some reasonable option; and while from aberration of mind he is incapable of exercising that option, was it really contemplated that he, or his friends on his behalf, should be permitted to bring to the scandal of a public trial his wife's alleged guilt and his own supposed dishonour? But another result might follow. His wife, though guilty herself, might recriminate and charge him with conduct which his condition of mind would prevent him from answering with effect. His suit would then fail; the counter-charge would be established against him, and his remedy be barred for ever, though he should recover his senses and wish to pursue it. Then take the case of the lunatic respondent. The gravest of all charges short of indictable crime is made against her. She is unable to give any explanation to her advisers of the circumstances from which her guilt is argued. The charge is of a purely personal character, and the decree sought is aimed directly at her personal *status*; her exculpation, if there be one, probably lies in facts and events known only to herself. All her letters and documents have probably passed into the hands of her husband, who may produce what he likes,

without fear of enquiries for the rest. Those who defend her—and if she belong to the humbler classes the expense of a defence will probably not be incurred at all—can only stand by and sift the petitioner's proofs: for all counter-evidence or proof of explanatory facts they will in most cases be wholly at a loss, for want of the knowledge which alone could lead to their production. Could the bare issue of adultery then be fairly tried against a person so placed? And, if not, did the statute which I have endeavoured to shew is so framed as to stipulate with scrupulous care for an equitable and meritorious view of conjugal delinquency on both sides really intend to place a dissolution of his marriage within the reach of a husband upon an inquiry so one-sided and incomplete? But if such an enquiry would be incomplete and inequitable on the fact of adultery, on all matters of recrimination, on all charges of neglect or misconduct on the part of the husband himself it would literally, in most cases, be no inquiry at all. Who is to know, much less find proof of the husband's cruelty? Who is to give the clue to and to bring to light the neglect or misconduct which may have conduced to the wife's adultery? If, before the adultery, he has deserted her, or separated himself from her, who is to meet or confute the facts he may put forward as a "reasonable excuse" for so doing? And these, be it remembered, are not only defences to the wife, but are by the statute made matter of public concern, and unusual means are enacted to preclude a decree of divorce from passing in any case in which they may exist. It is not too much to say that in the case of an insane respondent all these careful provisions and restrictions would become practically a dead letter; and as it is plain that the legislature did in no case intend that they should be so, I conclude that such a suit as this is not within the statute. I have thus far proceeded on the reason of the thing; authority upon the subject there is but little. With the exception of the case of *Bawden v. Bawden* (2), this is the first attempt in this Court to make an insane wife responsible in a suit for divorce. The judgment in that case was not an elaborate



one, but no one who reveres the sound legal capacity of my predecessor in this Court as it deserves to be revered, can fail to attribute great weight to his decision. It is in entire conformity with the order now under review. In the Ecclesiastical Court no case has been cited in which so much as a contrary *dictum* is to be found; and on the only occasion when the matter was mooted, the Judge's notes shew an opinion in conformity with that of Sir Cresswell Cresswell. In the record of Divorce Bills none is to be found against an insane wife. It may safely, therefore, be asserted that all previous authority is against the petitioner and the further maintenance of this suit. It is hardly needful to say that in the foregoing remarks I have made no allusion to the actual facts of this or any other case. The question is one of general principle, and I have so treated it. Neither has it seemed right to base any conclusion upon mere considerations of hardship that may arise out of a decision in one direction or the other. As far as the petitioner is concerned, there is no hardship, unless on the assumption of the respondent's guilt, an assumption we are not at liberty to make. If in no case where the respondent is insane is the petitioner entitled to claim relief, there may, no doubt, arise some cases in which the petitioner will suffer a grievous hardship. If, in all cases in which the respondent is insane, the petitioner is nevertheless entitled to proceed, there may be some cases in which the respondent will be the victim, not merely of hardship, but fatal injustice. In whichever way the statute is interpreted, full and complete justice is not in all cases within reach of the Court. But this is the inevitable result of the malady with which the respondent has been afflicted, and which has rendered a fair investigation of the truth impossible. In conclusion, I will advert to one other subject. It was suggested in argument that in staying the suit the interests of the co-respondents might be compromised. It might be sufficient, perhaps, to observe that the supposed hardships of the co-respondents are put forward, not by them, but in the interests of the petitioner. The co-respondents themselves have not

either of them appealed against this order, nor have they made any application regarding their costs. But if they had, I do not conceive that they have either the interest or the right to insist on a continuance of this suit, or that they can be wronged by its discontinuance. Suppose the respondent had died, could the petitioner have been obliged to continue the suit against the co-respondents? It must be remembered that the petitioner makes no claim for damages, and asks in his petition for no decree against them. They are made parties to the suit only because the statute peremptorily requires that they should be so. The object of this provision was no doubt to give them a *locus standi* to contest the proof of adultery. If no such proof is offered their legal interest in the matter is at an end. Is, then, a petitioner, it may be asked, who has commenced a suit, bound to go on with it whether he will or no? Suppose after the suit has begun he sees reason to doubt whether his wife is guilty, is he bound to continue the investigation in open court, in order to clear the reputation of the co-respondent? Or, again, if he forgive his wife, and they come together again, as not unfrequently happens, is he bound for the sake of the co-respondent to produce what he considers his proof of her infidelity, in order that the co-respondent may meet it in open Court? And if the Court were to hold that he were so bound, and that the suit must go on to a termination against the co-respondents, would the co-respondents obtain the end they are supposed to seek? No power of the Court can make the husband really try to prove adultery, unless he be so minded, and the reputation of the co-respondents would be in no degree mended by the form without the substance of an adverse investigation. The truth is that it is a misfortune inseparable from permitting a husband to charge his wife in public with adultery, that the name and reputation of a third person (if known) should be exposed to compromise. If the parties are innocent this cannot be otherwise than a grievous wrong, which nothing can wholly redress, and for which there is no practical mitigation but in that sense of justice on the part of the public which withholds

a judgment until a charge is not only made, but proved. I am, therefore, of opinion that the petition of the co-respondents throws no light upon the propriety of the order now under appeal. Their position is the same as it would have been if the respondent had died, if the petitioner had found his proofs of guilt insufficient, and had ceased to urge them, if he had forgiven his wife, and taken her back, or if, for any other reason whatever, he had ceased to demand relief at the hands of the Court. The order ought in my judgment to be affirmed.

I desire to add that if the form of the present order should make any difficulty in the way of the petitioner appealing to the House of Lords, and if a dismissal of the petition will remove the difficulty, I shall be very willing to hear any future application that the condition of the respondent or other considerations may warrant the petitioner in making with that object.

KELLY, C.B. — I am of opinion that the order in question should be rescinded or varied, and that the order to be made should be that further proceedings in the cause be stayed for such limited time as the Judge Ordinary shall think reasonable and expedient, unless the respondent shall in the mean time recover, with liberty to either party to apply. The ground upon which I think that the postponement should at present be temporary only is, that to decide the question now, and either to grant the order in the terms prayed or to permit the cause to proceed, notwithstanding the insanity of the respondent, may do great and grievous injustice and an irreparable injury to the one party or the other, whereas a stay of proceedings for a limited time will meet the present exigencies of the case, and do no wrong to either. In considering the real nature of this order, and its ultimate consequences, I must disclaim any allusion to the parties before us in this particular case, and whom, as no evidence has been taken upon the petition, I shall presume to be free from all imputation. But in dealing with the case we must remember that our decision will govern all such cases hereafter, and determine the rights of all parties to a suit for the dissolution of mar-

riage on the ground of adultery, under whatever circumstances it may come before the Court. The order, although in its terms conditional, is in effect, if the lady prove permanent or should continue during the life of the petitioner, an absolute bar to the suit, a final judgment against the petitioner, and a denial of the redress which he claims to be entitled to under the provisions of the statute, not only as regards the wife, but against the co-respondents. If such an order be made, the consequence to a petitioner is, that although he may have evidence incontrovertible of the adultery of his wife, and a just claim to damages to a large amount against a co-respondent, he finds himself — without any fault of his own, from an accident which he had no power to prevent — tied and bound to an adulterous wife for the remainder of his life, compelled by law to maintain her suitably to his own condition and rank and fortune, liable to the risk of spurious issue, his legitimate children or natural heirs despoiled of property, as, by the wife's claim to dower, or to personalty passing to her if he should die intestate, and himself for ever precluded from contracting marriage with another woman. On the other hand, if the petitioner be permitted to proceed, the consequences are scarcely less calamitous to the wife, it may be an innocent wife, in a case in which more than in any other species of judicial enquiry evidence may be given against her which she alone may be able to contradict or to explain away; and after a trial upon which, but for her insanity, she might have established a complete defence, she may recover her reason only to find herself dishonoured and disgraced for ever by a sentence of divorce for adultery. I venture to think that this Court ought not to entertain a question by its decision upon which it is compelled to choose between these two great evils, until, at least, the recovery of the respondent has become hopeless, and the Court is called upon, *ex debito justitiæ*, by one party or the other, to make the order, and, in effect, put an end to the suit, or to allow the petitioner to proceed and entitle himself to the redress which he seeks. It appears to be the result of the evidence upon the issue of insanity, as stated

by the learned Judge Ordinary when this order was originally pronounced (1), "that persons suffering from puerperal insanity for the most part recover within a year, some within eighteen months or two years, and some never." And it was then observed by the learned Judge, "that it had been extremely probable at the outset that the lady, if deranged, would before long cease to be so; and that there was some not unreasonable hope of her recovery still." The learned Judge further observed, "that whatever be the case in reference to permanent insanity, whether it ought to bar a suit or not, it may with some force be argued that until all well-founded expectation or fair hope of the respondent's being able to answer the petition be dispelled, the petitioner ought, for a reasonable time at least, to be forbidden to proceed without that answer." I entirely concur in the view thus taken of this case, I believe, as late as the month of April last, and am still of opinion, that the disastrous consequences which may or must ensue whenever the Court is compelled to decide this question are such as imperatively to call upon the Court to vary and qualify this order, and stay the proceedings only for a limited and definite time. But from the view taken of the case by the Judge Ordinary and my brother Keating, it becomes necessary to consider what power or jurisdiction this Court possesses to make an order which, in case the respondent should not recover, operates as a judgment against the petitioner, and a final bar to his suit. And here it is objected *in limine* that the Court has no power to appoint or to recognise a guardian *ad litem* to the respondent, and that, therefore, if the cause proceed, no defence at all can be made on her behalf. But I am clearly of opinion that such is not the law or the practice of the Court. I conceive it to be a power inherent in all the superior Courts of Law and Equity to appoint a guardian *ad litem* to any infant or lunatic who may be a party to a suit, whether *ex motu proprio*, or at the instance of any fit and proper person willing to assume and perform the duties of the office. All the cases upon this point referred to on the one side and on the other are uniform to shew that it has always been the

practice of Courts Spiritual, as of other Courts of Law and Equity, to appoint and recognise guardians to minors and lunatics, parties to suits before them. In *Barham v. Barham* (27), a wife, a minor, plaintiff in a suit against her husband for cruelty and adultery, appeared by a curator *ad litem*; and in *Beauraine v. Beauraine* (5), a curator *ad litem* was appointed to the respondent, a minor, sued by his wife for a divorce by reason of cruelty and adultery. This appointment was afterwards set aside by reason of the guardian having refused to accept the office. But the practice for a minor to appear by guardian in such a suit is not questioned. And in *Hancock v. Peaty* (13), in a suit of nullity of marriage by a wife against her husband, on the ground that she was insane at the time of the marriage, the plaintiff or petitioner appeared by a guardian, her brother, specially assigned by the Court at his own instance, and the suit was carried on and a decree of nullity pronounced, the plaintiff being lunatic, and therefore incapable of acting herself, and having appeared by guardian from the beginning to the end of the suit. In *Parnell v. Parnell* (4), a husband, lunatic, was permitted to institute and carry on a suit by his committee or guardian against his wife for a divorce by reason of adultery. And the principle upon which the practice rests was clearly laid down by Lord Stowell. This case is important as shewing conclusively that the insanity of a petitioner or plaintiff is no bar to a suit or a decree for a divorce by reason of adultery; and, inasmuch as adultery may be set up by way of re- crimination as a defence against such petition, it seems to follow that insanity is no bar to such a charge against a lunatic, and that he must defend himself against such charge through his guardian or committee. From what fell from the Court in this case it is also clear that, if necessary, the Court of Chancery might be applied to to appoint a committee, either generally or for a limited purpose, as *ad litem*, in any suit and in any court; and in the case now before us the Court has assumed and exercised this power, and it is under the appointment by the

(27) 1 Hag. Consist. 5.

Court of the guardian who is now conducting the defence of the respondent that the trial of an issue has taken place, motions have been entertained, and the very order now in question has been made. If the Court had no power to appoint a guardian and proceed with the suit against the respondent by her guardian, notwithstanding her insanity, what authority had it to try that issue, or to entertain this motion, receiving evidence upon oath *viva voce* or by affidavit; and above all, where was the authority to make the order now in question? All these acts and proceedings must be valid and binding alike on the petitioner and the respondent and the co-respondents, or they are absolutely void; and they cannot be binding if the Court had no power to proceed in the suit during the insanity of the respondent. And if they are void, how could the witnesses upon the trial, or the deponents upon the motion, be indicted for perjury; or how can the act of the guardian in appearing upon this motion, or in opposing or supporting this or any other order, be binding upon the petitioner, or upon the co-respondents, or upon the respondent herself if she should recover? If it be said that the Court being incompetent to proceed with the suit while the respondent is insane, it must of necessity resort to some kind of process and receive evidence before it can be informed or assured of the fact of the insanity, does not this shew that where the purposes of justice require that proceedings in a suit, whatever may be their nature, must be had notwithstanding the insanity of one of the parties, it is of necessity that the Court must permit and entertain these proceedings without the personal participation of the party lunatic, and admit a guardian to appear and act on his or her behalf? If, then, the respondent be well represented by the guardian now before the Court, the question at once arises—is the permanent insanity of the respondent a final bar to the suit? Now, a suit for a dissolution of marriage is the creature of the Act of Parliament, and we must look to the Act itself to see whether an order having this operation and effect is authorized expressly, or by

necessary implication, by any of its provisions. I conceive that it is to misapprehend the question to enquire whether the Court has power to go on with the suit notwithstanding the insanity of the respondent, and that the true question is whether the Court has any power to stop the suit except by a final judgment in the cause upon the issues joined, or by default, as expressly directed by the Act, or for nonconformity to some rule or practice lawfully made or established under the authority of the Act. For unless a power is conferred upon the Court by the terms of the Act to bar the suit upon this ground, it has no more jurisdiction to do so than it would have had to entertain the suit and adjudicate upon it if the Act had never been passed. A writ, or process, or the whole proceeding in a suit, may be set aside for irregularity or bad faith; but in such a case the proceeding is not stayed but set aside, and the party complainant may begin *de novo*, whereas here the power claimed by the Court is at once to put a stop to the suit which bars the right of the complainant for ever. To refuse to proceed in a suit where either party demands that it should be carried on to its natural determination according to law, and by an arbitrary act at once to bar the complainant of a statutory right for ever, appears to me to be a usurpation of authority and a denial of justice; and no instance occurs to me of such an act ever having been done by any Court. Where the proceeding with an action at law is stayed by a perpetual injunction the writ restrains the party only, and does not operate on the suit itself, and the injunction is founded upon some established rule or doctrine of equity which has obtained the force of law. I must, however, except the case of *Bawden v. Bawden* (2), which is, undoubtedly, an authority in support of the order, and being the decision of a very learned and eminent judge, is entitled to every consideration. But it can scarcely be said that that case was either argued or decided with all the attention which such a question deserved. The respondent was a pauper lunatic in a workhouse, her guardian the overseer of the parish, and the learned judge appears to have pro-

ceeded, at least in some measure, upon the authority of a case before Sir Herbert Jenner Fust, which, when examined into, turns out to be no decision at all. But were it otherwise, we, sitting as a court of appeal, are entitled to review that decision, and bound to decide the great question before us upon its own real merits, after bestowing on it the attention and the serious consideration which its high importance demands. Does the statute then confer this power? Does it not in effect prohibit the making of such an order, and render it imperative upon the Court to hear and proceed with the cause? By the 27th section of the statute 20 and 21 Vict., c. 85, "it is made lawful for any husband to present a petition to the Court praying that his marriage may be dissolved on the ground that his wife has, since the celebration thereof, been guilty of adultery." And by section 31, "in case the Court shall be satisfied on the evidence that the case of the petitioner has been proved, then the Court shall pronounce a decree declaring such marriage to be dissolved." Where, then, is the power under this statute to make an order, by reason of the insanity of a party, or for any other cause not declared and specified in the Act, that a suit instituted in strict conformity to its provisions shall not be heard, that the petitioner shall not be permitted to give evidence in support of his petition, and shall be barred of his right, although his case be proved, to a judgment of dissolution of marriage, which right is expressly conferred upon him by this section of the Act of Parliament? I must say that it appears to me that to make such an order would be in effect to insert a clause in the Act which it does not contain, and in some such terms as these:—"Provided always that in case the respondent shall become insane no further proceedings shall be had upon any such petition unless and until such respondent shall recover." The language of the 30th and 31st sections seems to me conclusive against this interpolation of a defence which the Legislature has not thought fit to authorize; for the statute here in plain and express terms enumerates and specifies the several cases in which the petitioner shall be disentitled to the relief sought. By the 30th sec-

tion, 1, "in case the Court shall not be satisfied that the alleged adultery has been committed;" 2, "or shall find the petitioner accessory to or conniving at the adultery;" 3, "or has condoned the adultery;" 4, "or that the petition is presented or prosecuted in collusion with either respondent," "the Court shall dismiss the petition." Then, by the 31st section, "the Court shall not be bound to pronounce such decree," 1, "if the petitioner has been guilty of adultery;" or 2, "of unreasonable delay in presenting or prosecuting the petition;" or 3, "of cruelty;" or 4, "of desertion without reasonable excuse;" or 5, "of such wilful neglect or misconduct as has conduced to the adultery." What authority has the Court to add to these cases and disregard the express provision before referred to, that if the Court shall be satisfied that the petitioner's case has been proved, and shall not find any of these specified defences, then "the Court shall pronounce a decree declaring such marriage to be dissolved?" I forbear to trace the consequences of such an order as this into a later stage of the suit, except to observe that it might well occur that after evidence taken on both sides and closed, and when the Court, perhaps without a jury, is, to use the language of the Act of Parliament, "satisfied on the evidence that the case of the petitioner has been proved," the respondent might become insane after the case had been so closed, and the Court about to pronounce a decree declaring the marriage to be dissolved. The suit would thus have arrived at that stage at which the words of the statute are imperative that "it shall pronounce the decree;" yet, if such an order can be made, this provision of the statute is absolutely set at naught. It would be well, also, to consider whether, if the Court had pronounced judgment in favour of the respondent and dismissed the suit, and the petitioner within the time allowed by the Act were to appeal, and the respondent then should become insane, the petitioner is also in this case to be barred of the right of appeal conferred upon him by the statute. If the making of this order be to contravene the provisions of the Act of Parliament, no question as to the analogy of a petition for a divorce

L

to other proceedings, civil or criminal, can arise. But if it were necessary to deal with this question of analogy, I must say that I think there is no analogy whatever in a suit of this nature to an indictment for an offence against the criminal law, to which it has been assimilated in argument, and in which the personal presence of the accused, and in a sane state of mind, is indispensable. In a suit like this, there is in the petitioner a right to a reparation for a wrong done, to damages against correspondents, and it may be to property, or to interest in property, real and personal, which might otherwise pass to or continue in the respondent. Upon an indictment there is no such party to the cause, no right to redress for a personal wrong, or to damages, or to any interest in property, or affecting property, involved in the proceeding. The party prosecuting is the Crown, representing the public, and no one is injured in either person or property by the suit being brought to an end without a trial or a judgment. So far is a suit for a divorce from partaking in any degree of the character of a criminal proceeding that, if such a suit had been instituted in any Court Spiritual before the Act establishing the Divorce Court, it could not have been conjoined with proceedings *in pœnam* of a criminal nature, for adultery. The Court might pronounce sentence of divorce *a mensâ et thoro*, but had no jurisdiction to inflict any penalty or punishment. And if proceedings of a criminal character had been instituted, it must have been by means of articles, upon the office of the judge promoted, as by indictment at the suit of the Queen in a criminal prosecution at the common law; and then, and then only, in such criminal suit could a sentence by way of penalty or punishment have been pronounced; and the jurisdiction to entertain a suit *in pœnam* for adultery and pronounce a sentence inflicting punishment is still confined to the Court Spiritual, and is not conferred upon this Court by the Act. This Court, indeed, possesses no criminal jurisdiction at all. It is true that a judgment of dissolution may operate as a punishment, but so, also, may any verdict and judgment in a civil action, whether for a wrong, as a libel or an assault, or to recover landed estate, as in

ejectment, or to recover debt or damages in an action of *assumpsit* or *trover*. Yet in all or any of these cases insanity is no defence and no bar to the suit, and no ground for a stay of proceedings. It is enough that the defendant has done a wrong, and given a right of action to the plaintiff for any of the causes above enumerated in any such case, although after the wrong done he may become insane, and so incapable of making his defence or instructing an attorney or counsel. A committee or guardian is appointed who conducts the defence, and the plaintiff enforces his legal right and proceeds with the suit to verdict and judgment. Indeed, this doctrine has been carried to its extreme length by Lord Eldon, who awarded a commission of bankruptcy, partaking both of a civil and criminal character, against an insolvent trader who, after committing an act of bankruptcy, had become insane. Again, in an indictment for a criminal offence, a trial cannot be had or begun in the absence of the accused; because he has a right, not by way of procedure, but as parcel of the common law, to be asked whether he is guilty or not guilty, and to plead "not guilty" in his own person, before he can be put upon his trial. In this suit, as in a civil cause for land, or debt, or damages, no such right exists. The Court may dispense with service of the petition, and proceed to trial and judgment in the absence of the respondent. In criminal cases, although the accused may have fled from justice, and his place of abode in a foreign country may be unknown, his personal appearance cannot be dispensed with, and no prosecution against him can be begun, continued, or ended, but in his presence. In these suits again, as in all other civil proceedings, if the respondent or defendant has departed the realm or secreted himself to avoid service of process, the service may be dispensed with and the suit may proceed. Indeed, upon every act, step, and stage of a cause the analogy to a civil suit is perfect, while to an indictment for a criminal offence it altogether fails. It is said that the *status* of the respondent is affected by the judgment; but so is that of the defendant in an action of ejectment, involving a ques-

tion of marriage or of legitimacy. It is true that the judgment in such an action is not a judgment *in rem*; but this really makes no difference. Upon an information in respect of smuggled goods exhibited under the revenue laws, the judgment is a judgment *in rem* that the goods be forfeited, but the insanity of the defendant would be no bar to such an information. Not only, then, is there no authority that a suit involving the *status* of one of the parties, or terminating in a judgment *in rem*, cannot be carried on against a lunatic; but the case before cited of *Hancock v. Peaty* (18) is a direct authority to the contrary; the judgment in that case being a judgment *in rem*, putting an end to the *status* of marriage, and the suit having been carried on from the beginning to the end while one of the parties whose marriage was declared null and void was a lunatic, and appeared throughout by her guardian. But another objection arises as to this order, which appears to me insuperable. We find that in this case two gentlemen are, under the exigency of the 28th section, made co-respondents. We must consider, therefore, how they are affected by this order, and in what condition they are placed. They are charged with acts of adultery with the chief respondent, the wife of the petitioner—a charge, if either of them be married, of a double adultery, and in that case of such a nature that until disproved it may disturb or be fatal to the domestic peace and happiness of the accused and of his wife; or if the petitioner has been the friend of the co-respondent the charge may involve the imputation of the basest treachery or ingratitude. Upon what ground can the Court deprive the co-respondent in such a case of his right to insist that the suit shall proceed to judgment, that he shall be enabled to deny and disprove these charges made against him? It was suggested during the argument that the suit might be continued against the co-respondents only. But this is not so. The petitioner may, under the 33rd section, proceed for damages alone against an alleged adulterer with his wife, and by section 11 of the 21 & 22 Vict. c. 108, the Court may, after the close of the evidence for the petitioner, direct the co-respondent

to be dismissed. But neither of these provisions applies to the present case; for here the petitioner has proceeded against the respondent and co-respondents jointly, and had he proceeded against the co-respondents alone the insanity of the wife would not have affected the suit, and no such order as this could have been made. So here the evidence is not closed, or indeed opened; but if it had been closed, it would only have been if the case had failed that the co-respondents could have been dismissed, and the dismissal would have been a proceeding in the suit which this order forbids. There is, therefore, no power in the Act conferred upon the Court either to direct or to permit the cause to proceed against the co-respondents under the circumstances of this case. Indeed, if the petitioner had the power, and were so to proceed, and the wife were afterwards to recover, the adultery might be tried twice over, and with different results; the co-respondents might be convicted of adultery with the wife, and made to pay large damages, and the wife might be acquitted of adultery with the co-respondents. Then, let us look again to section 28. If the insanity of a respondent wife puts an end to the suit, so also must the insanity of a respondent husband against whom a divorce for adultery is sought under section 28. And here a lady may be made a co-respondent, and charged with adultery with another lady's husband. And if this husband become insane, the suit must be stopped and the lady stigmatised as an adulteress, must pass the remainder of her life with this charge hanging over her head, unable to bring her accuser to the proof, and insist upon her acquittal, the petitioner in the meantime averring her guilt, but unable also to bring forward her evidence and substantiate her charge. But, further, it is provided in this clause that "either party may insist on having the contested matter of fact tried by a jury." Such an order as this absolutely repeals this all-important provision of the statute. What power has the Court so to obliterate this portion of the Act of Parliament, and take upon itself to deny alike to the accuser and the accused this great privilege thus conferred

upon them by the legislature? Next, how does this order affect the petitioner with respect to the co-respondents? Here there is no claim to damages. But in cases hereafter to be governed by this decision the petitioner may have a just claim, which he seeks to enforce against a co-respondent, to large and exemplary damages. How is he to recover them? How is justice to be done? The action of *crim. con.* is at an end, and the order expressly forbids any further proceedings in the suit unless the chief respondent shall recover. Can it be that the legislature intended to perpetrate this wrong? Then, as to the costs. The petitioner or the co-respondents may have incurred considerable or absolutely ruinous costs. Is there to be no means of recovering them, even where the facts of the case, entitling the one party or the other to claim them, may be capable of clear and immediate proof? I cannot but think that if the legislature had intended that the Court should have power to make such an order as this, provisions would have been found in the Act for doing justice, as well to the petitioner and to the co-respondents as to the party in whose favour the order is made. Lastly, it has been said that, as by the Act of Parliament the respondent may set up matters recriminatory by way of defence, it would be unjust to allow the petitioner to proceed while the respondent is in such a condition as that she cannot avail herself of the statutory defence. But the same argument might be urged in every civil cause where the defendant has become insane. The answer is that no such incapability exists, for the guardian of the respondent may plead and give evidence in support of the plea of recrimination in like manner as the respondent herself. It is true that a rule has been made, under the authority of the statute, that a plea of recrimination must be verified by affidavit, and it is clear that no affidavit can be made by an insane respondent; and if the necessity for this affidavit had arisen from a provision in the statute it would, no doubt, have presented the argument in a much stronger form. Where, however, the statute requires the petition to be verified by affidavit (sec. 41), the petitioner

is to file an affidavit verifying the same, only "so far as he or she is enabled to do so." But if the statute is imperative that the Court shall pronounce for a dissolution of marriage if satisfied upon the evidence that the charge in the petition is established, I conceive that it is not competent to the Court to make an order, the indirect effect of which would be to disable itself to proceed as required by the terms of the statute. And, as before observed, *Parnell v. Parnell* (4) is an authority that the committee of a lunatic husband may sue for adultery, although the wife might in such a suit plead recrimination by way of defence, thus putting the lunatic husband in the condition of a respondent. It is undoubtedly a great evil that a woman—perhaps an innocent woman—should be made to undergo a trial in a case of this nature while labouring under a state of mind which subjects her, or those who represent her in the suit, to many and great disadvantages in making her defence, and the grievance is but partially mitigated by the consideration that a judge or jury could not fail to have regard to her unhappy condition while dealing with the evidence adduced against her. But whether the evil is so great as to overbalance the wrong done to a husband, who, with possibly conclusive evidence that his wife is an adulteress, finds himself bound to her for a lifetime, by a tie that is indissoluble, and denied for ever the redress that he had been taught to believe an Act of Parliament had secured to him, is a question well worthy the serious consideration of the legislature. But I think that the legislature should have a voice in it, and that it is not for this Court to attempt to settle the question by a law of its own making. To the legislature, therefore, the question should be left; and if, at last, it be its will that a husband is to be thus dealt with, it is to be hoped that the Act to be passed may contain provisions under which something like justice may be done as well to him as to all other parties to the suit.

Upon all these grounds I am of opinion that this order cannot be sustained, that the Court should stay the proceedings from time to time as long as a reasonable hope remains that the respondent may



recover, but that when that hope shall have ceased the petitioner should be permitted to proceed with his suit.

The order was then affirmed, and the appeal dismissed with costs.

The Judge Ordinary added that an application to make any formal alteration in the order which would facilitate an appeal to the House of Lords might be made at Chambers.

Attorneys—B. Hunt, agent for Haymes, Hannay & Haymes, for petitioner; Benbow & Saltwell, for respondent; Lake & Co., for Viscount Cole; Baxter, Rose, Norton & Co., for Sir F. Johnstone.

MATRIMONIAL.  
1870.  
June 28.

YEATMAN v. YEATMAN AND  
RUMMELL.

*Dissolution of Marriage—Discretionary Bar—Desertion by Petitioner—20 & 21 Vict. c. 85. s. 31.*

*The discretion vested in the Court by s. 31 of 20 & 21 Vict. c. 85, will almost invariably be exercised by refusing to dissolve a marriage on the ground of the wife's adultery if she has been deserted by the petitioner.*

This was a petition for dissolution of marriage on the ground of the wife's adultery.

The respondent denied that she had committed adultery, and also pleaded that before the adultery she had been deserted by the petitioner, and that she had obtained a decree of judicial separation on that ground. The cause was heard by the Judge Ordinary, who reserved his judgment.

The petitioner appeared in person.  
Searle, for the respondent.

*Our. adv. vult.*

**LORD PENZANCE.**—In this case I think that it has been proved that the respondent committed adultery in 1866. The respondent alleged that in a former suit, before the date of the alleged adultery, she had obtained a decree of judicial separation

on the ground of the petitioner's desertion. The marriage took place in 1852, and the parties lived together until 1856, in which year the petitioner took the respondent to Germany, and left her there under circumstances which, in the opinion of the Court, constituted desertion. He never afterwards cohabited with her. In 1858 he instituted a suit in this Court to annul the marriage, on the ground that the respondent was insane at the time of its celebration. That suit failed. In 1862, and again in 1867, he instituted suits for dissolution of marriage on the ground of adultery. In each suit the respondent pleaded desertion, and in each case, the evidence failing to prove adultery, the question of desertion was not gone into. In 1867 the respondent petitioned for a judicial separation, on the ground of desertion for two years and upwards, and obtained a decree.

The desertion having taken place in 1856, and the adultery in 1866, I am asked now to exercise the discretion given me by s. 31 of 20 & 21 Vict. c. 85, and to dissolve the marriage. I think that upon no principle should I be justified in so doing. The 31st section enacts that the Court shall not be bound to pronounce a decree if the petitioner has deserted or wilfully separated himself from the other party to the marriage, before the adultery complained of, without reasonable excuse. The Court hitherto has not usually exercised the discretion vested in it by this section by granting a divorce, and desertion without excuse, when established, ought more especially to induce the Court to refuse a decree, for there is nothing so likely to conduce to adultery as the desertion of a young wife without reasonable excuse, and throwing her upon the world unprotected. In this case I see no excuse for the desertion. The petition must therefore be dismissed with costs.

*Petition dismissed, with costs.*

Attorney—S. Edwards, for respondent.

PROBATE.  
1870.  
Feb. 1. }

SMITH v. ATKINS.

*Probate—Practice—Testamentary Suit—  
Appeal against Decree—Leave to Appeal  
against Discharge of Rule for a New Trial*  
—20 & 21 Vict. c. 77. s. 39.

At the trial of issues in a testamentary suit, the jury found that the residuary clause in the will had been obtained by undue influence, whereupon the Court pronounced for the will exclusive of the residuary clause, but suspended the delivery out of probate in order that an application for a new trial might be made. A rule for a new trial having been discharged, the plaintiff who intended to appeal against the decree asked for leave to appeal against the order discharging the rule:—Held, that no such leave was necessary as the order being interlocutory it would be under appeal on the appeal against the decree.

The plaintiff, as executrix, propounded the will of Eleanor Jane Atkins, which, after a few small bequests, appointed the plaintiff residuary legatee. The defendant, one of the next of kin, pleaded: 1, Undue execution; 2, Incapacity; 3, Undue influence; 4, Fraud; and 5, that the deceased did not know and approve of the contents of the will. At the trial before Lord Penzance by special jury, the defendant obtained leave to amend the pleas by pleading that the residuary clause in the will, instead of the whole will, was obtained by undue influence. The jury found that the residuary clause was obtained by the undue influence of the plaintiff. Thereupon the Court decreed probate of the will without the residuary clause. A rule for a new trial was granted, and was argued before Lord Penzance, Channell, B., and Hannen, J., who discharged it.

The plaintiff, who intended to appeal to the House of Lords against the decree, now applied for leave to appeal against the discharge of the rule.

The Solicitor General (Sir J. D. Coleridge), C. Russell, Searle, and Barclay for the plaintiff.

*Ballantine, Serjt., H. James, and Dr. Tristram for the defendant.*

*Our adv. vult.*

LORD PENZANCE.—An application was made for leave to appeal against the discharge of the rule. I think that leave ought not to be given, for the simple reason that I find, on looking at the section of the statute, that if there is any right of appeal against the discharge of a rule for a new trial, it exists under the terms of the Act as soon as there is an appeal against the final decree of the Court, and there is nothing now to prevent the Court making its final decree. The section is as follows:—"Any person considering himself aggrieved by any final or interlocutory decree or order of the Court of Probate, may appeal therefrom to the House of Lords. Provided always that no appeal from an interlocutory order of the Court of Probate shall be made without leave of the Court of Probate first obtained, but on the hearing of an appeal from any final decree all interlocutory orders complained of shall be considered as under appeal as well as the final decree."

Now on looking at the registrar's minutes of what took place at the trial, I find that this was the order entered: "Whereupon the judge, on the application of counsel for the defendants, by his final decree pronounced for the force and validity of the last will and testament, excepting the residuary clause, of Eleanor Jane Atkins, the deceased in this cause, being the script bearing date July 30th, 1868, now remaining in the registry of this Court, and propounded in this cause on behalf of the plaintiff, the sole executrix therein named. And on the further application of counsel for the defendants, condemned Emma Smith, the plaintiff, in the costs incurred, or to be incurred in this cause, on behalf of the defendants. And the judge directed that the residuary clause be excluded from the probate, and further, that the said probate be not delivered out of the registry before July the 14th instant." So that what the Court did was to pronounce for the force and validity of the will, but in order to enable the plaintiff to move for a new trial it declared

further that the probate should not be delivered out of the registry, that the parties might go on in getting the papers in order in the registry. It could not possibly be granted until after the 13th of July, and on that day an application was made to extend the time granted. Then came the rule, and then the argument before the Court, and finally the discharge of the rule. All that remains now for the Court to do is to remove that restriction against delivering out the probate. The Court now orders that that restriction be removed, and that the plaintiff be at liberty, if she be so disposed, to proceed to take out the probate, and if she does not take it out in a fortnight, that the defendant be at liberty to apply to the Court. Of course it is possible that the plaintiff may not desire to take out probate, and it might be contended if she did that she would in some way hamper herself in her appeal, which I do not desire, but at the same time if she does not take probate the defendant ought to be entitled to go on in order to get the estate administered. I will not anticipate what may be said on that question, but I merely say that if the plaintiff does not take probate within a fortnight the defendant may apply to the Court.

With reference to the costs, I see from the shorthand writer's notes that at the trial an application was made to condemn the plaintiff in costs, and the Court acceded to that application. No suggestion was made as to the plaintiff being entitled to any costs, as executrix, for proving the will. Now if she proves the will, independently of any costs she might have personally to pay to the defendant by reason of the order of the Court, she would be entitled, according to the ordinary practice, to take her own costs of proving the will in solemn form out of the estate. That there may be no difficulty or doubt upon that question, I make it part of this order that, on taking probate, the plaintiff be at liberty to take out of the estate her costs of proving the will in solemn form, so that there may be no dispute about the residue, and she will come into Court to prove the will, as the Court ultimately holds that it ought to have stood.

*Dr. Spinks*, for the plaintiff, submitted that all the costs were incurred by the plaintiff, as executrix, before the defendants put upon the record the plea upon which they succeeded. If that plea had been on the record originally *non constat* that any costs would have been incurred.

LORD PENZANCE.—The defendants at first pleaded, with other pleas, that the whole will was obtained by undue influence. When the case came on for trial they desired to narrow that issue, and say something less than they had said before, not something more. Instead of saying that the whole will had been obtained by undue influence, they wished to say that only part had been so obtained. That would have been undoubtedly the proper time to object to that being done, on the ground of its influence on the costs. But I think nothing of that, for the Court desires to do what is just in the matter, and therefore if the plaintiff has been put to any further costs, by reason of the issue being so narrowed, undoubtedly she ought to have those costs, and not to have to pay them. But I cannot see that she has. The plea upon which, as narrowed, the defendants ultimately succeeded, appears to me to involve the whole history of the case. The only evidence which became necessary for the decision of the contention upon that plea was evidence which would be necessary in any view of the case. I do not think that any further evidence, or any further costs were cast upon the plaintiff by the alteration in the pleadings. If it can be shewn in detail that any such costs were incurred, application may be made to the Court that they should be allowed out of the estate.

---

Attorneys—C. Mossop, for plaintiff; F. L. Soames, agent for T. W. T. Cooke, Wokingham, for defendant.

---

PROBATE. }  
 1870. } THOMAS v. NURSE AND ANOTHER.  
 Feb. 22. }

*Probate—Jurisdiction of County Court—  
 Real Estate—Heir not Cited—20 & 21  
 Vict. c. 77. ss. 54 and 59.*

*The County Court has no jurisdiction over a probate suit where the deceased died seised or beneficially entitled to real estate of the value of 800*l.*, although the persons interested in the realty have not been cited.*

The defendants propounded the will of Frances Sarah White, late of Bungay, in the county of Suffolk. The plaintiff pleaded the usual pleas, upon which issue was joined.

*Witt*, on behalf of the defendants, moved the Court to order the issues to be tried by the Court.

*Pritchard*, for the plaintiff, asked for an order under s. 59 of 20 & 21 Vict. c. 77 (1), that they should be tried in the

(1) By s. 59 of 20 & 21 Vict. c. 77, where in any contentious matter arising out of any application for probate or administration, "it is shewn to the Court of Probate that the state of the property and place of abode of the deceased were such as to give contentious jurisdiction to the judge of a County Court, the Court of Probate may send the cause to such County Court."

Section 54 enacts:—"Where it shall appear by affidavit of the person, or some or one of the persons applying for probate or letters of administration, that the testator or intestate had at the time of his death his fixed place of abode in one of the districts specified in schedule H. to the Act, and that the personal estate in respect of which such probate or letters of administration should be granted under this Act, exclusive of what the deceased shall have been possessed of or entitled to as trustee, and not beneficially, but without deducting anything on account of the debts due and owing from the deceased is under the value of 200*l.*, and that the deceased at the time of his death was not seised or entitled beneficially of or to any real estate, or that the value of the real estate of or to which he was seised or beneficially entitled at the time of his death was under the value of 300*l.*, the judge of the County Court, having jurisdiction in the place in which

County Court for the district of Bungay, held at Beccles, in the county of Suffolk, on an affidavit that the deceased had at the time of her death her fixed abode in the district of Bungay, and that the whole of her estate was under the value of 200*l.*

*Witt*, *contra*, relied on an affidavit, which stated that the deceased died seised of freehold property of the value of 340*l.*

*Pritchard*.—Assuming that the deceased died seised of real estate of that value, that is no ground for not sending the cause to the County Court. The heir-at-law is not cited, and the probate therefore will not affect the real estate. It could not have been intended to oust the jurisdiction of the County Court, where the suit would not affect the realty.

LOED PENZANCE.—The objection cannot be allowed. The terms of the statute are clear. Three things are necessary to confer jurisdiction on the judge of the County Court. First, that the testator or intestate at the time of his death should have his fixed place of abode in one of certain districts. Secondly. That the personal estate should be under the value of 200*l.* Thirdly. That the deceased at the time of his death should not be seised or beneficially entitled to any real estate of the value of 300*l.* or upwards. In this case the two former requisites are complied with, the third is not. The statute does not require that there should be any dispute as to the real estate. I cannot, therefore, send the case to the County Court.

Attorneys—Pritchard & Sons, agents for Hartcup & Son, Bungay.

it shall be sworn that the deceased had, at the time of his death, his fixed place of abode, shall have the contentious jurisdiction of the Court of Probate in respect of questions as to the grant and revocation of probate of this will and letters of administration of the effects of such deceased person in case there be any contention in relation thereto."

MATRIMONIAL.  
1870.  
July 19, 26. }

SHAW v. THE ATTORNEY  
GENERAL.

*English Marriage—American Divorce  
and Re-marriage—Domicile.*

*A marriage celebrated in England between English subjects was dissolved by an American Court on the petition of the wife, on the ground of adultery and desertion. Both parties were at the time resident in the United States, but had not acquired an American domicile. Further, the exact whereabouts of the husband at the date of the institution of the suit in the Court in America not being known, the citation was served on him by advertisement, but no appearance to it was entered on his behalf. The wife re-married in America, and after her return to England filed a petition under the Legitimacy Declaration Act, praying that such second marriage might be declared valid. The Court refused to recognise the decree of divorce pronounced by the American Court, and dismissed the petition for a declaration of the validity of the second marriage.*

The petitioner prayed for a decree under the Legitimacy Declaration Act (21 & 22 Vict. c. 93), that her marriage with William Shaw, celebrated on the 22nd of September, 1859, at Rock Island, in the state of Illinois, United States of America, was valid.

The petitioner was born in England, and on the 26th of August, 1851, was lawfully married to William Suthers, at Halifax, in the county of York. They cohabited in this country until 1853, when they went to America. They returned to England in 1855, and cohabited until March, 1856, when Suthers deserted his wife and went back to America. In 1857, the petitioner followed him, but made no attempt to discover him. She lived for six months in the state of Massachusetts, and then went to the state of Iowa, where she lived for upwards of two years, supporting herself as a seamstress. In 1859, while resident in Iowa, she presented a petition to the District Court praying for a dissolution of her marriage with Suthers, on the ground of his adultery coupled with desertion. Suthers never resided in the

state of Iowa, and his whereabouts not being known, the citation was served on him by advertisement. No appearance was entered on his behalf. On the 12th of September, 1859, the District Court pronounced a decree dissolving the marriage, and on the 22nd of the same month the petitioner was married to William Shaw, at Rock Island, in the state of Illinois. Mr. and Mrs. Shaw afterwards returned to this country, where Mr. Shaw died, in April, 1869, leaving the petitioner a life interest in his property. Suthers, her first husband, never abandoned his English domicile, and was alive when the petitioner married Shaw.

*Mr. De Tracey Gould*, an American advocate, proved that by the law of the state of Iowa, the residence of the petitioner for six months in the state was sufficient to found the jurisdiction of the District Court. The decree of divorce was valid according to the law of the state, and would be recognised by the Courts of all the States of America. He also proved that the marriage of the petitioner with William Shaw in the state of Illinois was valid according to the law of the state, and would be recognised in the other states of America.

*Dr. Deane* (with him *Dr. Swaby*), for the petitioner.

*The Solicitor General* (*Sir J. D. Coleridge*) (with him *R. Bourke*), for the Attorney General.

*Cur. adv. vult.*

The following judgment was delivered on the 26th of July:—

LORD PENZANCE. — This is a petition presented by Betty Shaw praying the Court to declare that her marriage with William Shaw, on or about the 22nd of September, 1859, was a valid marriage, under the Legitimacy Declaration Act. This marriage was proved, but it appeared that on August 26th, 1851, she had been married to a man named William Suthers, at Halifax, in the county of York, and the petition goes on to say that this marriage on or about September 12th, 1859, was dissolved by a decree or judgment of the District Court of Scott county in the state of Iowa, in the United States of North America, being a Court of com-

M

petent jurisdiction thereto, on the ground of the adultery of the said William Suthers, and of his desertion for three years and upwards without reasonable excuse. Then the petition goes on to say that the decree has since the date thereof been and still is of full force and validity, and thereby she was fully divorced from the said William Suthers and ceased to be his lawful wife. The marriage with William Suthers, and the divorce in the state of Iowa, have both been proved, and the question is whether that divorce did or did not dissolve the English marriage in contemplation of English law.

The principles upon which this question must be decided have been so recently discussed in several cases in the Court of ultimate appeal that it is not necessary to enter upon the discussion at large on the present occasion. It may be sufficient to observe, firstly, that *Lolly's case* has never been overruled; secondly, that in no case has a foreign divorce been held to invalidate an English marriage between English subjects where the parties were not domiciled in the country by the tribunals of which the divorce was granted. Whether, if so domiciled, the English Courts would recognise and act upon such a divorce appears to be a question not wholly free from doubt; but the better opinion seems to be that they would do so, if the divorce be for a ground of divorce recognised as such in this country, and the foreign country be not resorted to for the collusive purpose of calling in the aid of its tribunals. To my own mind it is manifestly just and expedient that those who may have permanently taken up their abode in a foreign country, resigning their English domicile, should, in contemplation of English law, be permitted to resort with effect to the tribunal exercising jurisdiction over the new community of which, by their change of domicile, they have become a part, rather than that they should be forced back for relief upon the tribunal of the country they have abandoned. But the inquiry is needless in this case, because it seems to me to be neither just nor expedient that a woman whose domicile is English, and whose husband's domicile is English should, while living separate from him in a foreign State in which he

has never up to the time of the divorce set his foot, be permitted to resort to the local tribunal, and, without any notice to her husband, except an advertisement, which he never saw and was never likely to see, obtain a divorce against him behind his back. No case has ever yet decided that a man can, according to the law of this country, be divorced from his wife by the tribunals of a country in which he has never had either domicile or residence. He has never submitted himself, either directly or inferentially, to the jurisdiction of such a Court, and has never by any act of his own laid himself open to be affected by its process, if it ever reaches him. A judgment so obtained has, therefore, in addition to the want of jurisdiction, the incurable vice of being contrary to natural justice, because the proceedings are *ex parte* and in the absence of the party affected by them. It follows that the marriage upon which the petitioner founds her claim to a decree is invalid, and the petition must be dismissed.

*Petition dismissed.*

Attorneys—Edwards, Layton & Jaques, agents for Holroyd & Smith, Halifax, for petitioner; Gregory, Rowcliffes & Rawle, for the Attorney General.

#### MATRIMONIAL.

1870.

Feb. 8.

STERBINI v. STERBINI.

*Dissolution of Marriage—Validity of Agreement to withdraw from Suit.*

*An agreement for good consideration that the petitioner in a suit for dissolution of marriage will withdraw from the suit is binding, if it has not been obtained by fraud or duress.*

This was an application for a stay of proceedings in a suit by a wife for dissolution of marriage, on the ground of adultery and cruelty. On the 26th of November, 1869, after the institution of the suit, the petitioner signed the following agreement:—

“November 26th, 1869.

“Mr. A. M. Sterbini.

“Sir,—For the sake of my dear child, and upon the understanding that you bring him to England as soon as health permits,

and that I be at liberty to live apart from yourself, and reside in this country, your absence notwithstanding, I hereby undertake to withdraw from the suit commenced against you for divorce; and also that I will not institute any other proceedings in the Divorce Court in respect of your misconduct charged in my petition or otherwise prior to this date, or take any steps to deprive you of the legal custody of our child; but I reserve to myself, without prejudice from this undertaking, full power to continue my suit on all points next Hilary Term, or such after time as I may think fit, should you not fulfil the aforesaid condition, binding on you by this undertaking.

(Signed) "Emma Sterbini."

In December, 1869, the child was brought to England by the respondent, and had since remained under the petitioner's care. The petition was, however, not withdrawn, but stood in the list for hearing at the sittings in Hilary Term, 1870.

Affidavits, the effect of which sufficiently appears in the judgment, were filed in support of and against the application.

*Searle*, for the respondent, moved the Court to order that further proceedings be stayed. The agreement being simply for a compromise of the suit, and not for a separation, is binding—*Rowley v. Rowley* (1), *Hooper v. Hooper* (2). The respondent having complied with the terms of the agreement by bringing the child to England, the petitioner is bound not to proceed further with the suit.

*Inderwick*.—The agreement to withdraw from the suit would no doubt be binding if it had been fairly obtained and were not one-sided. It was not fairly obtained, because the petitioner was induced to sign it by the grossly exaggerated account which the respondent had given of the child's illness. That led her to fear that unless she consented to withdraw from the suit, she would never see her child again. Further, the agreement is in its terms one-sided. The sole consideration for the surrender of the

petitioner's rights under the suit was the promise that the child should be brought to England within no specified time, the respondent reserving the right to take the child again whenever he should think fit. When the agreement was signed by the petitioner, she was without legal assistance, and was in such distress of mind that she hardly knew what she was doing. Such an agreement so obtained ought not to be held binding.

LORD PENZANCE. — The agreement would only be invalidated by fraud or duress. I think there was neither. There is no fraud, because what is suggested about the illness of the child not being genuine is not established. The husband in his letter says the child is ill—the illness may or may not be serious; he does not say it is dying. There is no proof that what he said was not word for word true, and no deception seems to have been practised. As to duress, after reading the affidavit of Mr. Rix, I cannot see that there was any duress. Mr. Rix is, comparatively speaking, a disinterested person, and the Court is inclined to rely more on what he says than on the statements of Mrs. Sterbini. So far from there being any duress, it seems to me that Mrs. Sterbini voluntarily offered to drop the proceedings. The reason why the agreement was put into writing was that Mr. Rix was not satisfied with a mere verbal promise. He told Mrs. Sterbini before she signed the agreement that the child was out of danger, and it is idle to say that she was forced into signing it. Then it is said that the agreement was one-sided, and that Mrs. Sterbini had no legal advice when she signed it. I do not think that the Court can go into that matter. Mrs. Sterbini agreed to stop the litigation on the promise that the child should be brought back. That has been done. The child has been handed over to her, and her husband has agreed that it shall remain with her. I shall dismiss the petition, and shall make an order that the child remain in the wife's custody until further order.

Attorneys—Belfrage & Middleton, for petitioner;  
Mr. W. Miller, for respondent.

(1) 3 Sw. & Tr. 347; s. c. 34 Law J. Rep. (N.S.) Prob. M. & A. 97; affirmed 35 Law J. Rep. (N.S.) Prob. M. & A. 100; s. c. Law Rep. 1 H. of L. 220.

(2) 1 Sw. & Tr. 602; s. c. 30 Law J. Rep. (N.S.) Prob. M. & A. 49.

PROBATE. }  
1870. } *In the goods of J. W. PUDDPHATT.*  
June 7. }

*Will—Execution—Name of Testator below Names of Witnesses—No Evidence as to order in which Parties signed—Probate.*

*The name of the testator was at the foot of the will, but below the names of the attesting witnesses. Both witnesses were dead, and there was no evidence of the order in which they and the testator signed the will, but a due execution was to be inferred from the attestation clause. The Court decreed probate of the will.*

The testator, John Warner Puddephatt, otherwise John Eyles, of Luton, Bedfordshire, tailor, died on the 15th of December, 1858, leaving a will, dated 30th of June, 1857, which concluded thus:—

Signed by the said  
John Warner Puddephatt (commonly called John Eyles) in the presence of, and by the direction of the said J. W. Puddephatt, the testator, as his last will and testament, and such signature acknowledged by him in the presence of

Thomas Tomlinson,  
John Craker.

John Eyles.

The witnesses were both dead, and no one else could be found who was present at the execution of the will. The handwriting of the testator and of the witnesses respectively was proved.

*Searle moved for probate of the will. In the absence of direct evidence, the Court would assume, from the wording of the attestation clause, that the will was properly executed.*

The Court decreed probate of the will.

Attorney—T. Sismey, agent for G. Bailey, Luton, for all parties interested.

MATRIMONIAL. }  
1870. } *ALEXANDRE v. ALEXANDRE*  
June 10. } *(THE QUEEN'S PROCTOR*  
*INTERVENING).*

*Matrimonial Suit—Suppression of Material Facts—23 & 24 Vict. c. 144. s. 7—Intervention of Queen's Proctor—Decree.*

*The Court will not refuse a petitioner his decrees because of the suppression of material facts, if upon the whole case he should appear entitled to relief.*

This was a petition by the husband for a dissolution of marriage on the ground of the wife's adultery. The petition set forth that the marriage was celebrated at Jersey, in January, 1856; that in February, 1858, the respondent refused to live with the petitioner, and that he lost sight of her from 1860 until March, 1868, when they resumed cohabitation; that in the following month (April, 1868) he discovered that in October, 1860, the respondent gave birth to a child of which he was not the father; that between September, 1867, and March, 1868, she had committed adultery with divers men, and lived as a prostitute at Buckingham Place, Southwark; and that he thereupon ceased to live with her, and filed his petition. No appearance was entered on behalf of the respondent. At the hearing, evidence was given in support of the charges alleged in the petition, and the Court granted a decree *nisi* on the 9th June, 1869.

The Queen's Proctor having obtained leave to intervene, filed pleas in which he alleged (in addition to charges of collusion, connivance, and neglect, upon which no question arose) that the petitioner had suppressed material facts, and condoned the adultery of the respondent. The particulars which accompanied the pleas set forth "that when the petitioner resumed cohabitation with the respondent in the year 1868, he was well aware that she had frequently committed adultery and that she had given birth to an illegitimate child during the separation, and that he condoned such adultery, and that no adultery subsequent to such condoned adultery was alleged in the petition or proved at the hearing." The petitioner joined issue on the pleas.



At the hearing, which took place before the Judge Ordinary, on Friday, June 10, the respondent deposed that, desiring to return to cohabitation, she met her husband by appointment in London in April, 1868. At the interview she confessed that she had given birth to a child in 1860, and asked his forgiveness. He forgave her and took her back, and further consented to have the child live with them. She denied that she had ever led the life of a prostitute, but she admitted that while living at Buckingham Place from September, 1867, until March, 1868, she carried on an adulterous intercourse with a man who visited her, and that she had concealed the character of this intimacy from her husband.

*The Attorney General (Sir R. P. Collier) (with him Searle), for the Queen's Proctor, submitted that the pleas of condonation and suppression of material facts had been established, and that the decree nisi should be reversed and the petition dismissed. He referred to 23 & 24 Vict. c. 144. s. 7 (1). G. Broune for the petitioner.*

**LORD PENZANCE.**—I quite agree that the petitioner did fail to bring before the Court most material facts. In his peti-

(1) By section 7 of the 23 & 24 Vict. c. 144, it is enacted: "Every decree for a divorce shall in the first instance be a decree *nisi*, not to be made absolute till after the expiration of such time, not less than three months from the pronouncing thereof, as the Court shall by general or special order from time to time direct; and during that period any person shall be at liberty, in such manner as the Court shall by general or special order in that behalf from time to time direct, to shew cause why the said decree should not be made absolute by reason of the same having been obtained by collusion, or by reason of material facts not brought before the Court; and, on cause being so shewn, the Court shall deal with the case by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry, or otherwise as justice may require; and at any time during the progress of the cause, or before the decree is made absolute, any person may give information to her Majesty's Proctor of any matter material to the due decision of the cause, who may thereupon take such steps as the Attorney General may deem necessary or expedient," &c., &c.

tion he charged his wife with adultery on what I may call two separate occasions. The first adultery with which he charged her was an adultery that resulted in the birth of a child; and being aware that after the birth of that child he had taken her back to live with him, in his petition he endeavoured to explain away the circumstance by stating that at the time he resumed the cohabitation he was not aware of the birth of the child. In that way he endeavoured to get rid of the condonation which, according to the facts as they now stand, undoubtedly existed in respect of that adultery. So far, I think, the learned Attorney-General's argument is made out, because it is now clear, assuming what the respondent says to be true, that when he took her back to live with him he knew that while separated from him she had had a child. But there is nothing as it seems to me in the 7th section of the Act (23 & 24 Vict. c. 144) that would justify the Court, upon the mere proof that some material facts had been kept from the knowledge of the Court, in refusing a man his divorce if upon the whole case he is entitled to it. The suppression of a material fact is a sufficient reason to justify a third person or the Queen's Proctor intervening; but where the material fact, whatever it may be, is brought to light and placed before the Court, there is nothing in the seventh section of the Amendment Act which would justify the Court in withholding a decree if, upon the whole case, and supposing the fact to have been brought to light in the first instance, the petitioner should be entitled to it. Therefore the Court has to consider whether upon the whole case there is anything that stands in the way of the decree, treating the facts, as now known, as if they had been brought before the Court in the first instance. As regards the first adultery charged, there would be a perfect answer to the decree, because he condoned it; but there is another portion of his complaint which was established at the trial, and which is not only not disputed now, but is supported by what the witness in the box tells us took place. The eighth paragraph of the

petition charges "that your petitioner's said wife, from the month of September in the year 1867, until the month of March, 1868, committed adultery with divers men, to your petitioner unknown, on divers occasions, and lived as a prostitute at 7 Buckingham Place, South-wark." At the trial he proved that charge by the mouth of a policeman, who said that he saw this woman in the streets, and saw her take men home to her house at night on more than one occasion. When in the witness-box she refused to answer categorically as to all that she did while living at Buckingham Place, but with great truth she acknowledged that she had been guilty of adultery there, while denying that she had led the sort of life imputed to her. Substantially, therefore, the charge of adultery at 7, Buckingham Place is proved, in my judgment, and what answer is there to it? It has never been condoned, for the husband never knew of it. When she went back in 1868 she carefully concealed it from him, and was in fact afraid to tell it. She told him of the birth of the child, and very possibly one reason for her doing so was that she was very anxious to have the child come and live with her. But whether that was her reason or not, she admitted having committed herself once and having had a child, and she as certainly kept back from her husband the life that she had led at Buckingham Place. It seems to me, therefore, no one can say that he has ever pardoned it. That being so, I see no answer to the charge, and I ought not to withhold the decree. At the same time I think it was a most proper case

for the intervention of the Queen's Proctor.

*Decree accordingly.*

Attorneys—Hancock, Saunders & Hawksford, for petitioner. Proctor—F. Dyke, the Queen's Proctor.

MATRIMONIAL. }  
1870.  
March 17. }

HARRIS v. HARRIS AND  
MILTON.

*Identity of Respondent—Evidence of Petitioner as to—Corroboration—Practice.*

*In an undefended suit for dissolution of marriage, the only evidence as to the identity of the respondent was that of the petitioner himself. The Court refused to act on it without corroboration.*

In this case, which was an undefended suit by the husband for dissolution of marriage, the cohabitation between the respondent and co-respondent was proved by the lodging-house keeper in whose house they had lodged, but the only evidence of the respondent's identity was that of the petitioner himself who had seen her at the house.

*Searle* for the petitioner.

The Court refused to grant a decree until corroborative evidence as to the identity of the respondent was produced.

The hearing was adjourned, and the respondent having been afterwards identified by the petitioner's brother in the presence of the lodging-house keeper, a decree *nisi* was granted.

Attorneys—Lewis & Lewis, for petitioner.

# INDEX

## TO THE SUBJECTS OF CASES IN

# THE COURT OF PROBATE,

## AND

# THE COURT FOR DIVORCE AND MATRIMONIAL CAUSES.

MICHAELMAS TERM, 1869, TO MICHAELMAS TERM, 1870.

---

**ADMINISTRATION—grant to legatee where executor resident abroad and bankrupt!**—Where the executor of a will was bankrupt and resident in Australia, the Court granted letters of administration, with the will annexed, to one of the legatees, but required that before the letters issued, the written consent of the next of kin, and of the persons entitled to the undisposed of residus, should be brought in and filed in the Registry. *In the goods of Cooper*, 8

— *where there is an administrator acting under the Court of Chancery*—An administrator *pendente lite*, acting under an order of the Court of Chancery, which directed the personal estate of the intestate to be applied in payment of her debts and funeral expenses in a due course of administration, advertised for sale the unrealised portions of the estate, consisting chiefly of personal ornaments and family relics. The estate, exclusive of such articles and things, was insufficient to meet the debts proved and claimed, but plaintiff, in order to prevent the sale, was willing to deposit in the Registry a sum sufficient to cover the deficiency:—The Court, though deeming the offer of the plaintiff a reasonable one, declined to restrain the administrator from proceeding with the sale, and intimated that as a rule it would not interfere with an administrator acting under an order of the Court of Chancery. *Tichborne v. Tichborne*; and *In the goods of Tichborne*, 22

— *grant to attorney*—When the person entitled to administration is in England, a grant will not be made to his attorney unless the estate consists solely of property held in trust. *In the goods of Bullar*, 26

— *grant de bonis non (with will annexed) to administrator of executor*—Where A died, having

appointed B executor of his will, and B proved the will, and died leaving part of the estates unadministered, the Court made a grant *de bonis non* (with the will annexed) to the administrator of B, the parties entitled in priority being abroad and difficult to be found; but required that security should be given to the amount of their share of the property. *In the goods of Hicks*, 27

— *residuary legatees: vested interest: right to grant de bonis non*—Testator left by his will to his wife a life interest in his real, leasehold, and personal estates, with permission to consume such portion of the personal estate as was consumable by nature. On her death or re-marriage, he gave his real and leasehold estates and such personal estate as then remained unconsumed to his children in equal shares, their executors, administrators and assigns, with a proviso that if all and every his children died before obtaining a vested interest under the will, the property should go in equal shares to his then next and nearest of kin, and the then next and nearest of kin of his wife. Testator's only child survived him, but died in his mother's lifetime and previous to her re-marriage. The wife died leaving part of the estate unadministered:—*Held*, that the child did not take a vested interest under the will, and administration granted to the next of kin of the testator. *Greenhalgh v. Bates*, 44

— *with will annexed de bonis non, following grant in America to person not entitled by English law*—A died domiciled in America, and by her will appointed B, her father, sole executor and residuary legatee. B died, leaving part of the estate unadministered. On the application of his executors, who were all domiciled in America, administration of the unadministered estate of

A was granted to C by the Court in America. The Court, following the American grant, allowed a grant of administration (with will annexed) of the personal estate of A in this country, to go to C. *In the goods of Hill*, 52

**ADMINISTRATION** (continued)—*citation to husband to take grant of wife's estate*—In an administration suit in Chancery it became necessary for the purposes of the suit, that a personal representative of A, the wife of B, should be appointed. The Court, at the instance of C, who had no direct interest, allowed a citation to issue to B to take administration of his wife's estate, or to shew cause why it should not be granted to C. *In the goods of Williams*, 48

—*pendente lite: no dispute as to appointment of executors*—In a testamentary suit in which there was no dispute as to the appointment of the executors, and one of them was willing to act, the Court refused to appoint an administrator *pendente lite*, unless it could be shewn that there was something requisite to be done in relation to the estate which the executor, before probate, could not do. *Mortimer v. Paul*, 47

**ALIMONY**—*wife's petition for, pendente lite: practice when no answer*—The wife filed her petition for alimony, *pendente lite*. The husband filed no answer thereto:—*Held*, that he was not entitled to cross-examine witnesses called in support of the petition. *Constable v. Constable*, 17

**AMENDMENT**—*wife's petition allowed to be amended by addition of charge of cruelty*—On the hearing of her petition for dissolution of marriage, the wife proved the adultery of the husband, but failed to establish the charge of desertion. The Court allowed her subsequently to amend her petition by adding a charge of cruelty, but intimated that strict proof would be required to support it. *Parkinson v. Parkinson*, 21

—*right of respondent to oppose alteration of prayer of petition*—The wife petitioned for a dissolution of her marriage, by reason of the husband's adultery and cruelty, and proved both charges. The decree *nisi* was suspended at her request, and subsequently she asked to be allowed to amend the petition, by substituting a prayer for judicial separation. The respondent opposed the alteration, and alleged that the petitioner herself had been guilty of adultery. The Court granted liberty to respondent to file affidavits in support of the charge; and no affidavits being filed, allowed the petition to be amended as prayed. *Mycock v. Mycock*, 56

**APPEAL**—*testamentary suit: appeal against decree: leave to appeal against discharge of rule for a new trial*—At the trial of issues in a testamentary suit, the jury found that the residuary clause in the will had been obtained by undue influence, whereupon the Court pronounced for the will exclusive of the residuary clause, but suspended

the delivery out of probate, in order that an application for a new trial might be made. A rule for a new trial having been discharged, plaintiff, who intended to appeal against the decree, asked for leave to appeal against the order discharging the rule:—*Held*, that no such leave was necessary, as the order being interlocutory, it would be under appeal on the appeal against the decree. *Smith v. Atkins*, 78

**CHILDREN.** See Custody of Children. Settlements.

**CODICIL.** See Probate.

**CONFIRMATION AND PROBATE ACT**—*additional confirmation sealed in registry*—On death of testator, a domiciled Scotchman, his widow filed in the Commissary Court at Jedburgh an inventory of his estate, distinguishing which part was situate in Scotland and which in England, and the value of each, and she was decreed and confirmed executrix *dative* to the deceased. The confirmation was sealed in England under the provisions of the Confirmation and Probate Act. Subsequently additional estate was discovered in England. Thereupon the executrix filed a fresh inventory of such estate in the Commissary Court, and obtained an *eik* or additional confirmation:—The Court ordered the *eik* to be sealed in the Registry. *In the goods of Ryde*, 49

**COSTS**—*of heir-at-law intervening: costs of issues found distributively*—An heir-at-law, who intervenes in a suit and opposes a will, is entitled to costs if the will is pronounced against. *Rayson v. Parton*, 20

When issues are found distributively, the party condemned in costs is not liable for costs of issues found in his favour, if separable from the other costs. *Ibid*.

—*shewing cause against decree absolute: power to condemn intervener in costs*—The Court has no power to condemn in costs a person who enters an appearance and files affidavits in opposition to a decree *nisi* being made absolute, and afterwards abandons his opposition. *Vivian v. Vivian*, 54

**COUNTY COURT**—jurisdiction of, in testamentary suits. See Probate.

**CRUELTY**—*undue exercise of marital authority*—The wife being seriously ill, was advised by her medical attendant to leave home for a time. The husband refused. Having become worse, she left home without his consent, and stayed away some months, which she passed with her relations. On her return home she was deposed by her husband from her natural position as mistress of his house; she was deprived of the use of money entirely; all that she required had to be put down on paper, and her husband provided it if he thought proper. Having refused to tell her husband on one occasion of going into town everywhere that she had been, an

interdict was placed on her going out at all; those whom she desired to see were forbidden the house, and she was prohibited from writing any letters unless the husband saw them before they were posted. Under this treatment her health again broke down:—*Held*, an undue exercise of marital authority, and to constitute legal cruelty. *Kelly v. Kelly*, 9

**CUSTODY OF CHILDREN—*jurisdiction***—The Court has no power, in suits for restitution of conjugal rights, to make any order as to the custody of the children of the marriage. *Chambers v. Chambers*, 56

**DAMAGES—*application of***—In a suit by a husband for dissolution of marriage, the Court refused to order any part of the damages assessed to be settled on the wife, but directed them to be applied, first, to the payment of such part of the petitioner's costs as he should not recover from the co-respondent, and subject thereto, to be settled upon the issue of the marriage. *Taylor v. Taylor*, 23

—*co-respondent removing his effects: writ of fi. fa. issued without personal service of the order*—In a suit by the husband for dissolution of marriage on the ground of the wife's adultery, damages to the amount of 500*l.* were assessed against the co-respondent. The Court granted a decree nisi, and condemned him in costs. On affidavits, shewing that the co-respondent was removing his effects, and evading service of a peremptory order for payment of the damages, the Court allowed a writ of *fi. fa.* to issue forthwith, without requiring personal service of the order. *Pritchard v. Pritchard*, 46

**DESERPTION—*deed of separation agreed to a year afterwards, and fully executed: wife's right to relief***—A husband deserted his wife. A year afterwards, through the intervention of a mutual friend, a deed of separation was agreed to by which the husband covenanted to make the wife an allowance, and charged it upon his reversionary interest in a sum of money. The deed was fully executed, but no part of the allowance paid:—*Held*, that the wife had bargained away her right to relief, and could not establish the charge of desertion without cause for two years. *Nott v. Nott* distinguished. *Parkinson v. Parkinson*, 14

— See Dissolution of Marriage.

**DISSOLUTION OF MARRIAGE—*unreasonable delay***—The marriage took place in 1844. In 1848 the husband was guilty of incestuous adultery, and in 1850 he and the wife separated. Yielding to the entreaties of her mother, the wife abstained from instituting her suit until after her mother's death, which occurred in 1868:—*Held*, to constitute unreasonable delay, but decree granted on consideration of all the circumstances of the case. *Newman v. Newman*, 36

NEW SERIES, 39.—PROB. AND M.

—*insanity of respondent when cited and subsequently: staying proceedings*—In a suit for dissolution of marriage on ground of the wife's adultery, the respondent being at the time of service of the citation, and having since continued, unfit from mental incapacity to answer the petition and duly instruct her attorney, the Judge Ordinary made an order staying further proceedings until the respondent should recover. Upon appeal to the full Court, it was *Held*, by the Judge Ordinary and Keating, J., that the insanity of the respondent, so long as it should continue, would be a bar to the suit, and therefore that the order ought to be affirmed; but by Kelly, C.B., that the Court had power only to stay the proceedings so long as there might be a reasonable probability that the respondent would recover, and that when her recovery became hopeless, the petitioner ought to be allowed to proceed, and therefore that the order ought to be rescinded. *Mordaunt v. Mordaunt, Cole and Johnstone*, 57

—*discretionary bar: desertion by petitioner*—The discretion vested in the Court by s. 31 of 20 & 21 Vict. c. 85, will almost invariably be exercised by refusing to dissolve a marriage on the ground of the wife's adultery if she has been deserted by the petitioner. *Yeatman v. Yeatman*, 77

—*validity of agreement to withdraw from suit*—An agreement for good consideration that the petitioner in a suit for dissolution of marriage will withdraw from the suit is binding, if it has not been obtained by fraud or duress. *Sterbini v. Sterbini*, 82

— See Desertion.

**DIVORCE**—alteration of Settlement. See Settlements.

**EVIDENCE—*competence of witness to give evidence of his or her adultery: privilege of witness to refuse***—The proviso in 32 & 33 Vict. c. 68, s. 3, that "no witness, whether a party to the suit or not, shall be liable to be asked, or bound to answer, any question tending to shew that he or she has been guilty of adultery," does not render inadmissible the evidence of a witness that he or she has committed adultery. The witness may claim the protection of the statute or give the evidence, but a party to the suit cannot object to its admission. *Hebblethwaite v. Hebblethwaite*, 15

— in proof of person named as executor. See Will.

**EXECUTOR.** See Will.

**INSANITY**—of co-respondent. See Dissolution of Marriage.

**JUDICIAL SEPARATION—*undue exercise of marital authority: moral cruelty***—If force, whether physical or moral, is systematically exerted to

N

compel the submission of the wife in such a manner, to such a degree, and during such length of time, as to break down her health and render serious malady imminent, the interference of the law cannot be justly withheld by any Court which affects to have charge of the wife's personal safety. *Kelly v. Kelly*, 28

— See Cruelty.

JURISDICTION. See Costs. Custody of Children.

MARRIAGE—*declaration of validity: American divorce and re-marriage: domicile*—A marriage celebrated in England between English subjects was dissolved by an American Court on the petition of the wife, on the ground of adultery and desertion. Both parties were at the time resident in the United States, but had not acquired an American domicile. Further, the exact whereabouts of the husband at the date of the institution of the suit in the Court in America not being known, the citation was served on him by advertisement. No appearance to it was entered on his behalf, nor did it appear that he even saw the advertisement. The wife re-married in America, and after her return to England filed a petition under the Legitimacy Declaration Act, praying that such second marriage might be declared valid. The Court refused to recognise the decree of divorce pronounced by the American Court and dismissed the petition for a declaration of the validity of the second marriage. *Shaw v. The Attorney General*, 81

MATRIMONIAL SUIT—*suppression of material facts*—The Court will not refuse a petitioner his decree because of the suppression of material facts, if upon the whole case he should appear entitled to relief. *Alexandre v. Alexandre (Queen's Proctor Intervening)*, 84

PRACTICE—*uncorroborated evidence of petitioner as to identity of respondent*—In an undefended suit for dissolution of marriage, the only evidence as to the identity of the respondent was that of the petitioner himself. The Court refused to act on it without corroboration. *Harris v. Harris*, 86

— discretionary bar. See Dissolution of Marriage.

— staying proceedings on ground of insanity. See Dissolution of Marriage.

— See Alimony. Appeal. County Court. Matrimonial suit. Staying Proceedings.

PROBATE—*paper simply revoking a will*—An instrument which disposes of no property, but simply declares an intention to revoke a previous will, is not a will or codicil, and is therefore not entitled to probate. *In the goods of Fraser*, 20

— of codicil where will not forthcoming—Where testator made a codicil to his will and gave it to

his son to keep, and on his death the will was not forthcoming, the codicil not having been revoked by any of the modes indicated in the statute, was admitted to proof. *Black v. Jobling* affirmed. *In the goods of Savage*, 25

— proof of revocation by later will—Testator made a will in 1831. A few years before his death in 1863, he produced to two acquaintances a paper dated 4th June, 1847, which he alleged to be his will, and got one of them to make a copy of it. This paper was in substance the same as the will of 1831. It had the name of the deceased and the names of two attesting witnesses at the bottom of it, but neither of the persons to whom it was shewn could speak to any of the signatures. The copy which the deceased signed in their presence was forthcoming, but the original document could not be found. The Court held that there was no evidence of its existence as a will, and granted probate of the will of 1831. *In the goods of Gray*, 42

— of codicil beginning "*I hereby make a free gift to A.B., &c.*"—Testator, shortly before his death, executed a paper which began, "*I hereby make a free gift to A.B., of, &c.*" The Court being satisfied that he intended the operation of the paper to be dependent on his death, granted probate of it as a codicil to his will. *Robertson v. Smith*, 41

— of copy will and codicil where original will in India—The testator made his will in India and deposited it with a bank at Calcutta. While temporarily resident in Scotland he executed a codicil, in which he referred in distinct terms to a copy of the will. This copy he produced to the witnesses at the time he executed the codicil, and he deposited both papers in the hands of his executor.—*Held*, that the copy was incorporated by the codicil, and probate of copy-will and codicil granted, without production of original will. *In the goods of Mercer*, 43

— codicil by mistake referring to first of two wills—Testator executed a will on February 13th, 1864, and another on June 24th, 1865, revoking all former wills. He afterwards executed a codicil which purported to be a codicil to his will dated February 13th, 1864, and after devising some property, confirmed his said will. The solicitor who prepared the codicil had inserted the date of the first will under the supposition that it was the last will. There was nothing in the codicil which shewed an intention to revive the first will.—*Held*, that the second will and codicil were entitled to probate. *In the goods of Anderson*, 55

— two wills, one limited to property in England, the other to property in Tasmania: separate executors—The testator died leaving two wills—one limited to property in England, the other to property in Tasmania, and he appointed different executors in each. The Court granted

probate of both papers as together constituting the will of the deceased, to the executors named in the English will. *In the goods of Harris*, 48

— *jurisdiction of County Court: real estate: heir not cited*—The County Court has no jurisdiction over a probate suit where the deceased died seised or beneficially entitled to real estate of the value of 300*l.*, although the persons interested in the reality have not been cited. *Thomas v. Nurse*, 80

— See Confirmation and Probate Act. Will.

**RESTITUTION OF CONJUGAL RIGHTS—husband's suit for: unfounded charges in wife's answer: costs of suit**—The husband filed a petition for restitution of conjugal rights. The wife, in her answer, charged him with cruelty of a gross and indecent kind, but at the hearing her counsel admitted that she had no case. The wife had a separate income of 760*l.* per annum. She had induced her husband to give up his practice as a surgeon in the country, and had put him to expense by the unfounded charges in her answer:—The Court, under these circumstances, condemned her in the costs of the suit. *Miller v. Miller*, 4

— *substituted service of order: order not obeyed: sequestration against wife's separate estate*—In a suit by the husband for restitution of conjugal rights, a decree was made that the wife should return to cohabitation. The wife was abroad; her address was kept secret by her friends, and personal service of the decree could not be effected. Substituted service on her attorney was in consequence allowed, and the decree remaining unobeyed, the Court, without requiring a previous writ of attachment to issue, granted a writ of sequestration against the wife's separate estate, for the purpose of enforcing obedience to its order. *Miller v. Miller*, 38

— See Custody of Children.

**SEQUESTRATION**—to enforce obedience to decree. See Restitution of Conjugal Rights.

**SERVICE**. See Restitution of Conjugal Rights.

**SETTLEMENTS—total income allotted to maintenance of children**—On the marriage of the parties, the father of the respondent (the wife) brought into settlement a sum of 3,000*l.*, in which the first life-interest was given to the respondent. Her conduct was bad, and after her marriage with the petitioner had been dissolved, she intermarried with the co-respondent, an officer in the army. The Court ordered the total income derived from the fund in settlement to be applied, during the lifetime of respondent, to the maintenance of the three children of the marriage. *St. Paul v. St. Paul*, 50

— *covenant by father of petitioner to pay respondent an annual sum on petitioner's death*—On

the marriage of the parties, the father of the petitioner covenanted to pay to the respondent the annual sum of 100*l.* after the death of the petitioner. The marriage was dissolved by reason of the respondent's adultery. The Court ordered that the money should be applied for the benefit of the child of the marriage, but held that it had no power to deprive the respondent of her right under the covenant on the death of the child. *Sykes v. Sykes*, 52

**STAYING PROCEEDINGS—non-payment of costs in former suit**—Non-payment of the costs of a suit for dissolution of marriage, in which the husband, the petitioner, has failed, is not a ground for staying proceedings in a suit by him for dissolution on the ground of fresh adultery. *Yeatman v. Yeatman*, 37

— on account of respondent's insanity. See Dissolution of Marriage.

**WILL—execution: signature not seen by witnesses: acknowledgement**—A asked B to witness his will. He subsequently asked C if he would sign a paper (not mentioning its character) for him, and said he should wish B to be also present at the same time. A few weeks after they met by appointment. A produced a paper from his pocket and (alluding to the death of his wife) observed,—"They were aware that there had been a change in his circumstances which involved an alteration in his affairs." He then so folded the paper that they could not see his signature or any other writing upon it, but they believed that they were signing his will:—*Held*, that the circumstances warranted the presumption that the signature of the testator was on the paper when the witnesses signed, and that there was a sufficient acknowledgment of it. *Beckett v. Howe*, 1

— A asked B, in presence of C, to witness her will, which lay open on the table. B signed the will, but did not observe A's signature. B then handed the pen to C, but did not see him sign his name. The will was prepared by C. The attestation clause stated that it was signed by the witnesses in the presence of each other, and C had also prepared other wills:—*Held*, a good execution; the circumstances warranting the presumption that A's signature was on the paper when B signed, and that C, who was aware of the requirements of a will, signed before B left the room. *Oliver v. Johns*, 7

— *effect of reference to "written directions affixed to will: where none affixed*—A executed, in 1866, a will which referred to written directions, which he intended to form part of the will. This paper, which began, "To my executors,—I have written the following directions for your guidance with respect to many things and goods not mentioned in my will, which said will very probably will be found at William Weedon's, Esq., solicitor," was further subsequently executed by him according to the pro-

visions of the Wills Act. In 1868 he executed a second will, which revoked all previous wills, and contained the following clause: "All my books, pictures, sketches, guns, rods, goods and chattels in and about the rooms I shall occupy at the time of my decease, I wish my executors to dispose of faithfully and conscientiously according to the written directions left by me, and affixed to this my will, trusting, as I unhesitatingly do, in their honour and integrity." Nothing was affixed to the will, which remained in the possession of Mr. Weedon, the solicitor who prepared it, and the only paper of written directions forthcoming was that which the testator intended to form part of the will of 1866:—*Held*, that it was not incorporated by the reference in the will of 1868, and that as an executed testamentary paper it was revoked by such will. *In the goods of Gill*, 5

**WILL (continued)—test of will being contingent]**—

A test for ascertaining whether a will is contingent is the question whether the disposition of property is dependant upon the happening of some event or calamity referred to in the will, or whether the imminence of such event or calamity is merely a reason for making the will. In the former case the will is contingent; in the latter it is not. *In the goods of Porter*, 12

— **appointment of executor: parol evidence as to persons named]**—Testator appointed his "said nephew, Joseph Grant, executor" of his will. His wife's nephew of that name had resided with him for many years, and managed his business. There was also living a nephew (a brother's son) of the like name. Both claimed probate of the will:—*Held*, that parol evidence was admissible to shew the relation and circumstances in which the respective parties stood to the testator, and the sense in which he habitually used the word "nephew," when referring to his wife's nephew. And the evidence shewing that the wife's nephew was the person meant, probate of the will was decreed to him accordingly. *Grant v. Grant*, 17

— **attestation: name of witness written by another]**—An attesting witness must himself subscribe the will. It is not essential that a witness should sign his own name, provided it is clear that his subscription is intended as an act of attestation. *In the goods of Duggins*, 24

The name of A, an attesting witness to a will, was at his request subscribed by B, who was himself present at the execution:—*Held*, that as A had not subscribed, and B's subscription was not intended as an act of attestation, the will was not duly executed. *Ibid*.

— **residue: money resulting from "sale of effects"]**—Testator, in addition to specific bequests, gave to A, the only legatee named in the will, "also any money that may result from the sale of my effects after paying the few small debts that I owe":—*Held*, not to carry the residue. *In the goods of O'Loughlin*, 53

— **ambiguity: error as to Christian name of executor]**—Testator by his will appointed "Francis Courtenay Thorpe, of Hampton, gentleman," one of his executors. The only person answering the description was a youth of twelve, the son of Francis Corbet Thorpe, of Hampton, gentleman, who, previous to the execution of the will, had been asked by the testator and consented to be one of his executors and trustees:—*Held*, that there was no ambiguity to entitle the Court to enquire into the intention of the testator so as to ascertain which of the two—the father or son—he meant to be executor. *In the goods of Peel*, 36

— **execution: name of testator below names of witnesses]**—The name of the testator was at the foot of the will, but below the names of the attesting witnesses. Both witnesses were dead, and there was no evidence of the order in which they and the testator signed the will, but a due execution was to be inferred from the attestation clause. The Court decreed probate of the will. *In the goods of Puddephatt*, 84

— See Probate.

# ERRATUM.

The paragraph in the report of *Mycock v. Mycock*, page 56, beginning, "*Dr. Spinks* (on June 14) renewed the application," &c., should run thus:—

*Dr. Spinks* (on June 14) renewed the application for an alteration of the prayer of the petition.

*Dr. Swabey*, for the respondent, questioned whether the Court had power to do so, and referred to the 31st section of the Divorce Act.



## TABLE OF CASES.

Alexandre v. Alexandre, 84  
Anderson, in the goods of, 55

Beckett v. Howe, 1  
Bullar, in the goods of, 26

Chambers v. Chambers, 56  
Constable v. Constable, 17  
Cooper, in the goods of, 8

Duggins, in the goods of, 24

Fraser, in the goods of, 20

Gill, in the goods of, 5  
Grant v. Grant, 17  
Gray, in the goods of, 42  
Greenhalgh v. Bates, 44

Harris v. Harris, 86  
— in the goods of, 48  
Hebblethwaite v. Hebblethwaite, 15  
Hicks, in the goods of, 27  
Hill, in the goods of, 52

Kelly v. Kelly, 9, 28

Mercer, in the goods of, 43  
Miller v. Miller, 4, 38  
Mordaunt v. Mordaunt, 57  
Mortimer v. Paull, 47  
Mycock v. Mycock, 56

Newman v. Newman, 36

O'Loughlin, in the goods of, 53  
Olver v. Johns, 7

Parkinson v. Parkinson, 14, 21  
Peel, in the goods of, 36  
Porter, in the goods of, 12  
Pritchard v. Pritchard, 46  
Puddephatt, in the goods of, 84

Rayson v. Parton, 20  
Robertson v. Smith, 41  
Ryde, in the goods of, 49

Savage, in the goods of, 25  
Shaw v. Attorney General, 81  
Smith v. Atkins, 78  
St. Paul v. St. Paul, 50  
Sterbini v. Sterbini, 82  
Sykes v. Sykes, 52

Taylor v. Taylor, 23  
Thomas v. Nurse, 80  
Titchbourne, in the goods of, 22  
— v. Titchbourne, 22

Vivian v. Vivian, 54

Williams, in the goods of, 48

Yeatman v. Yeatman, 37, 77

PRINTED BY SPOTTISWOODE & Co.

New-street Square ; 29 Chancery Lane ; 30 Parliament Street ; 38 Royal Exchange.

THE  
**LAW JOURNAL REPORTS**

FOR  
THE YEAR 1870:

**CASES**

DECIDED BY THE  
JUDICIAL COMMITTEE AND THE LORDS OF  
**Her Majesty's Privy Council,**

REPORTED BY

v EDWARD BULLOCK, ESQ. BARRISTER-AT-LAW.

[THE CASES ON APPEAL FROM THE ADMIRALTY AND ECCLESIASTICAL COURTS ARE  
PUBLISHED WITH THE CASES OF THOSE COURTS RESPECTIVELY.]

---

MICHAELMAS TERM, 1869, TO MICHAELMAS TERM, 1870.

---

PRIVY COUNCIL.  
NEW SERIES, VOL. XXXIX.

---

LONDON:  
PRINTED BY SPOTTISWOODE AND CO. NEW-STREET SQUARE.  
PUBLISHED BY EDWARD BRET INCE, 5, QUALITY COURT, CHANCERY LANE.

MDCCCLXX.



# CASES ARGUED AND DETERMINED

IN THE

JUDICIAL COMMITTEE AND THE LORDS OF

Her Majesty's Privy Council.

COMMENCING WITH

MICHAELMAS TERM, 33 VICTORIÆ.

1869.  
Dec. 10,  
11, 18.

CURRIE AND COMPANY, ap-  
pellants v. THE BOMBAY  
NATIVE INSURANCE COM-  
PANY, respondents.\*

*Marine Insurance—Constructive total loss  
—Notice of Abandonment; Form of—In-  
surable interest—Disbursements.*

*It is not necessary to use the word "aban-  
don" in a notice of abandonment; any  
equivalent expressions which inform the  
underwriters that it is the intention of the  
assured to give up to them the property in-  
sured on the ground of its having been to-  
tally lost is sufficient.*

*The assured must not delay to give notice  
of abandonment, but sufficient time must be  
allowed to enable the assured to exercise  
their judgment whether the circumstances  
entitle them to abandon.*

*Advances made by the charterer to the  
master at the port of loading to be repaid by  
deductions out of freight, give the charterer  
an insurable interest in a policy on dis-  
bursements.*

*The appellants chartered a vessel for a  
voyage, and insured the cargo against total  
loss. In the course of the voyage the vessel  
went aground, became hogged, and sustained  
other injuries, and surveyors recommended  
her to be stripped with dispatch, and steps  
taken to save the cargo, but no attempt was  
made to do so; and after several days the  
master, fearing bad weather, sold the vessel  
and cargo for the benefit of all concerned.*

\* Present—Lord Chelmsford, Sir J. Colville, and  
Sir J. Napier.

NEW SERIES, 39.—PRIV. COUN.

*The vessel remained for some days in the  
same state, and the weather proving fine,  
the purchasers saved a large part of the  
cargo:—Held, that the appellants were not  
entitled to treat the cargo as having been  
totally lost.*

This was an appeal from a judgment of  
the Recorder of Rangoon.

The suit in the Court below was  
brought by the appellants who carried  
on business as merchants at Moulmein,  
against the respondents, to recover the  
several sums of 38,400 rupees and 1,600  
rupees, as a total loss upon two policies of  
insurance effected by them with the re-  
spondents, upon the "cargo" and "dis-  
bursements," respectively, of the ship  
*Northland*, upon a voyage from Moulmein  
to Madras.

The policies were against total loss  
only.

A cargo of teak and other timber was  
loaded on board the *Northland* at Moul-  
mein, and on the 2nd of June, 1867, she  
set sail on her voyage with the cargo on  
board. The appellants had also made  
disbursements on the said ship, within  
the meaning of the policy on "disburse-  
ments."

The *Northland* started on her said voy-  
age from Moulmein to Madras, and pro-  
ceeded in tow to a place called Halfway  
Creek, where she anchored on account of  
the state of the tide. About half-an-hour  
afterwards she was found to be driving, and  
a second anchor was let go, which brought

B

her up; but, as the tide fell, she grounded. The master and crew endeavoured, but unsuccessfully, to get her off. On the following morning the vessel was found to have sustained considerable damage. The captain remained with the vessel until the 4th of June, endeavouring to save her, when he returned to Moulmein with the passengers, and applied for assistance, and for cargo boats to save what he could. The captain took back with him surveyors, who surveyed the ship, and recommended him to strip the ship and save what he could, which he proceeded to do, and this continued until the 10th of June; on which day the captain came up to Moulmein again, and on the 11th of June had an interview with the agent of the respondents. The captain then ordered a second survey by the same surveyors, who sent in a second report, which was as follows:—"We find the ship lying on the sands near Halfway Creek, in 13 feet low water, fore and aft, and amidships in about 5 feet. The ship is hogged to a fearful extent, and broken amidships, the water flowing and ebbing in and out and through her as the tide rises and falls, and the low parts under water at high tide. The ship is stripped to a gantring and all her stores landed. We are of opinion that it would be impossible to save the cargo, which consists of padouk and teak, without cutting the ship's decks and beams, on account of the logs of timber being so severely jammed, and which is caused by the vessel being so hogged and out of shape."

On receiving this report the captain advertised the ship and cargo for sale, for the benefit of all concerned.

Prior to the receipt of the second report of the surveyors (on the 10th of June), the appellants, by letter, gave notice to the respondents' agent, that the *Northland* was a total wreck, and that they claimed payment on their policies. Some of the cargo was subsequently saved by reason of a succession of weather unusually fine for that season of the year; but the ship soon became a perfect wreck, and she with the rest of the cargo was lost.

The case was heard, and on the 23rd of March, 1868, when the Recorder delivered

judgment, holding that there was not a total loss, actual or constructive, of the cargo and disbursements, or either of them, within the terms of the policies; and he dismissed the case with costs.

From this judgment the present appeal was brought.

*Sir R. Palmer and Grantham* for the appellants.—The ship and cargo were sold by the captain for the benefit of all parties. There was a total loss of the subject matter insured. The appellants are entitled to recover the amounts insured under the respective policies. There was, at all events, a constructive total loss. Such constructive total loss was one of the contingencies insured against by the policies. The letter of the 10th of June was a sufficient notice of abandonment. No precise form is necessary for a notice of abandonment. The assured must be allowed a reasonable time to consider whether the subject matter assured is constructively lost. The payments by the appellants to the captain for disbursements were moneys paid on behalf of the captain and owners of the ship, and not payments made on account of cargo or freight. The right to recover them did not depend on whether the freight could have been earned or not. (They referred to *Read v. Bonham* (1), *King v. Walker* (2), *Gernon v. Royal Exchange Insurance Company* (3), *Farnworth v. Hyde* (4), *Cambridge v. Anderton* (5), *Kidston v. Empire Marine Insurance Company* (6), *Arnould on Marine Insurance*, vol. 2, p. 582.)

*The Solicitor General (Sir J. D. Coleridge)*, and *Walkin Williams* for the respondents.—The judgment of the Court below was right. The policies covered total loss only. This was not the case of a claim for a total loss; it was at most a claim for a constructive total loss. The goods were actually in existence, and it might have turned out that the goods could ultimately be forwarded to their destination. Even if

(1) 3 B. & B. 147.

(2) 3 Hurl. & C. 209; s.c. 33 Law J. Rep. (N.S.) Exch. 325.

(3) 6 Taunt. 383.

(4) 36 Law J. Rep. (N.S.) C.P. 33.

(5) 2 B. & C. 691.

(6) 36 Law J. Rep. (N.S.) C.P. 156.

the assured were entitled to treat the subject of insurance as a constructive total loss the notice of abandonment was not given in sufficient time. The assured must not delay to give notice of abandonment, but here there was delay. (They referred to *Hall v. Janson* (7), *Flint v. Fleming* (8), *Shipton v. Thornton* (9), *Moss v. Smith* (10), and *Parsons on Maritime Insurance*.)

*Sir R. Palmer in reply.*

*Cur. adv. vult.*

The judgment of their Lordships was delivered on the 18th of December, by—

LORD CHELMSFORD.—This is an appeal from the judgment of the Recorder of Rangoon, dismissing the suit of the appellants, brought to recover the amount of two policies of insurance effected by them with the respondents upon the "cargo" and "disbursements" respectively of the ship *Northland*, upon a voyage from Moulmein to Madras.

The policies, which were dated 1st June, 1867, were against total loss only.

The *Northland*, with a cargo consisting partly of teak and partly of Padouk and other timber (of great specific gravity), set sail from Moulmein on the insured voyage to Madras, on the 2nd June, 1867. She proceeded in charge of a pilot down the Moulmein River, in tow of a tug steamer, and came to an anchor about half-past five in the evening of that day.

In consequence of the strength of the tide, the *Northland* dragged her anchors and went aground, about 9 o'clock. Endeavours were made during the night to get her off, but without success; and in the morning, the tide having left her, she was found (in the language of the pilot and the captain), "broken," or "almost broken in two." And the captain added, "if there had been any means by which she could then have been got into deep water she would most probably have gone down."

The captain procured a survey of the

ship, and on the 6th June, three surveyors reported that they found her lying ashore on the sands perfectly upright, but hogged to the extent of four feet; and, after describing particularly other injuries which she had sustained, they concluded their report in these terms: "In consequence of the vessel being loaded with a cargo of Padouk and teak timber, we would recommend that she be stripped and dismantled with all despatch, and steps taken to save as much of the cargo and stores as possible for the benefit of all concerned." The underwriters had a survey made on their behalf by a Mr. Peeche, upon whose evidence in other respects their Lordships are not disposed to lay any stress, but upon this occasion he substantially agreed with the other surveyors, and reported as follows: "Her hull is so seriously injured that I recommend prompt and decisive steps be taken to dismantle and discharge for the benefit of all interested."

The captain, in accordance with the recommendation of the surveyors, proceeded to dismantle the vessel, and "sent down spars and sails, and everything above water, which they could move." This work of dismantling continued until the 10th of June, the day on which a notice of abandonment was given, but nothing was done or attempted towards discharging the cargo, which, according to the evidence of Mr. Dodd, one of the surveyors, by employing extra hands, might have gone on simultaneously with the work of dismantling the vessel. The grounds upon which the captain thought it would be useless to attempt to get out the cargo were stated by him to be that, "at the time the vessel was aground, the weather was nasty and squally up to the 10th or 11th of June; that at that time of the year bad and heavy weather is to be expected; that he didn't think he could have got out a single log of the cargo without destroying the ship by cutting her open; that if the ports (meaning the openings through which the timber was shipped, and under ordinary circumstances would have been taken out of the vessel) had been opened, she would have filled with sand; and that if he had attempted to get at the cargo by cutting

(7) 4 E. & B. 400; s.c. 24 Law J. Rep. (N.S.) Q.B. 97.

(8) 1 B. & Ad. 45; s.c. 8 Law J. Rep. K.B. 350.

(9) 9 Ad. & E. 314; s.c. 8 Law J. Rep. (N.S.) Q.B. 73.

(10) 9 Com. B. Rep. 94; s.c. 19 Law J. Rep. (N.S.) C.P. 225.

the ship, with the weather such as it was at the time, he didn't think he should have saved any of the ship or cargo." There is some contradictory evidence as to the state of the weather between the 6th and the 10th or 11th of June. The pilot, without specifying the exact time to which he was speaking, said, "The weather was very dirty, blowing hard with rain. There was a heavy sea on at high water. At low water it was smooth enough." The notarial protest made by the captain, however, does not state that there was any stormy weather between the time of the vessel grounding and the 10th or 11th of June. His description of the weather on each day is:—"Thursday, 6th June, commenced with light cloudy weather and variable winds." He gives no account of the state of the weather on the 7th June. On the 8th June he describes it as "squally weather and rain." But on Sunday, the 9th June, this is his description: "Throughout these twenty-four hours fine clear weather and moderate breeze from S.W." On Monday, the 10th June, he states it to have been "fine all day, clear weather, and very hot." And on Tuesday, the 11th of June, that the "first and middle part was fine clear weather and very hot, with fine S.W. breeze." This protest of the captain tends strongly to confirm the evidence of the witness Bodeker, who is the agent of the respondent, and who swore that "there had been unusually fine weather for some time before the second survey."

With respect to the reason given by the captain for not making any effort to save the cargo—that none of it could be got out without cutting the ship open, this was not the opinion of the surveyors at the time of the first survey, but on the contrary, they recommend "steps to be taken to save as much of the cargo as possible." And at the trial, Mr. Dodd, the Government Surveyor, said, "On the second occasion on which I visited the ship I did not think it was possible to save the cargo without cutting the ship." And, "When I saw the *Northland* first I think she could have partly discharged her cargo and come up to Moulmein." Another of the surveyors, Mr. Carruthers, said, "It was on the second survey that I came to

the conclusion that the cargo could not be got out except by cutting the ship's decks."

Before this second survey was made, and while it was the opinion of the surveyors that steps ought to be taken to save the cargo, the assured, the appellants, on the 10th June, 1867, wrote to the underwriters in these terms: "With regard to the *Northland*, we regret to say that she is a total wreck, and we have hereby to give you notice that we shall claim payment of the policies we hold against her cargo and disbursements."

On the following day, the 11th June, another survey took place by the same three surveyors who had made the former one, and they reported as follows: "The ship is hogged to a fearful extent, and broken amidship, the water flowing and ebbing in and out and through her as the tide rises and falls, and the bow ports under water at high tide. We are of opinion it would be impossible to save the cargo, which consists of Padouk and teak, without cutting the ship's decks and beams, on account of the logs of timber being so severely jammed, which is caused by the vessel being so fearfully hogged and out of shape."

After this second survey the captain, on the 14th June, advertised for sale by public auction the wreck of the British ship *Northland*, together with her cargo of timber, in one lot, and on the following day the ship and cargo were sold for the sum of 13,000 rupees. The purchasers immediately after the sale proceeded to discharge the timber, and succeeded in obtaining all of it except sixty logs. There were two timber ports at the side and one on the deck. These were opened, and the timber was got up through the hatchway and out of the ports, but the greater part was lifted through the hatchway. The person employed by the purchasers to discharge the cargo stated in his evidence that the vessel remained in the same position all the time they were discharging, and that they found no difficulty whatever in getting it out. They worked for thirty-five days uninterruptedly, but on the thirty-sixth day there was a strong wind, and the vessel became a wreck, and thereupon they ceased working and left her. Under



ordinary circumstances the cargo could have been discharged in twenty-one days. Upon this evidence the Recorder was of opinion that there was no total loss, actual or constructive, within the terms of either of the two policies, and that even if the assured had a right to abandon, there was no sufficient notice of abandonment.

Upon the argument before their Lordships, the Solicitor General, for the respondents, very properly admitted that the notice of abandonment was in its terms sufficient. The case upon which the Recorder founded his judgment of the insufficiency of the notice was a *nisi prius* case of *Parmeter v. Todhunter* (11), in which there having been a verbal notice that the ship insured had been captured, recaptured, and carried into Grenada, and that the underwriters were required to settle as for a total loss, and to give directions as to the disposition of the ship and cargo, Lord Ellenborough said "the abandonment must be express and direct, and I think the word 'abandon' should be used to render it effectual." But whatever strictness of construction may have been applied to notices of abandonment in former times, it never could have been absolutely necessary to use the technical word "abandon;" any equivalent expressions which informed the underwriters that it was the intention of the assured to give up to them the property insured upon the ground of its having been totally lost, must always have been sufficient. There can be no doubt that the letter of the 10th of June from the assured to the underwriters was a sufficient intimation of the intention of the assured to divest themselves of the property in the *Northland*, and to vest it in the underwriters, subject, of course, to the question of their right to abandon, upon the ground of either an actual or a constructive total loss.

The respondents confined their answer to the appellants' case to the denial of there having been a total loss of the cargo, and to the objection that, if there were a total loss, the notice of abandonment was not given within a reasonable time.

What is a reasonable time in a case of

this description must depend upon the particular circumstances of each case. On the one hand, the assured is not to delay his notice when a total loss occurs, in order to take his chance of doing better for himself by keeping the subject insured, and then when he finds it will be more to his advantage to do so, throwing the burthen upon the underwriters, while, on the other, the underwriters cannot complain of a suspense of judgment fairly exercised on the part of the assured, to enable him to determine whether the circumstances are such as entitle him to abandon.

In the present case, assuming the loss to be a total one, there appears to have been no unreasonable delay in giving the notice of abandonment. At the time of the first survey on the 6th of June, there was no reason for supposing that the timber would be totally lost. The surveyors at this time recommended steps to be taken which they must have supposed would have been effectual to save some, at least, of the cargo. But at the time when the notice was given (as sufficiently appears by the surveyors' report of the following day), things had assumed a much more serious appearance, so as to justify the apprehension that the cargo would be entirely lost. Whether the vessel was brought into the condition described in the second survey, suddenly, or gradually between the 6th and the 10th of June is not in evidence, but in either case their Lordships think that there was no unreasonable delay in giving the notice of abandonment, and that supposing there was a total loss of the subject insured it would entitle the appellants to recover the amount of the policies.

We arrive then at the question whether there was a total loss under the policies? And here we must distinguish between the policy on the timber, and that upon the disbursements, as different considerations are applicable to them. Taking first the policy on the timber, does the evidence shew that the assured were entitled to treat the case as one of total loss? It cannot be contended that at the time of the first survey the timber, or at all events some part of it, could not have been saved; and if part might have been

saved the loss, of course, could be only partial. The surveyors were all of opinion that endeavours should be made to get the timber out of the ship, and at the first survey they did not think it would have been necessary to cut the decks to effect this object. It was the duty of the assured, or of the captain of the *Northland* (to whom everything appears to have been left), to take some steps in accordance with the recommendation of the surveyors to try and save the cargo. But towards this object the captain literally did nothing. As far as dismantling the ship went he acted upon the report of the surveyors, and continued this particular work down to the 10th of June, but according to Mr. Dodd this need not have interfered with the discharge of the cargo, for although the crew could not have assisted in that service, "by employing extra hands both operations might have been conducted together."

The excuse offered by the captain for not attempting to get out the timber is that not only at that time of the year "bad and heavy weather" might be expected, but that the weather was actually "nasty and squally," by which he must be understood to mean that it was of such a character as to render it impracticable to make even an attempt to get at the timber. But his evidence as to the state of the weather from the 6th to the 11th of June, both inclusive, is positively contradicted by his own notarial protest, to which reference has been already made.

It is impossible, therefore, to believe that the state of the weather prevented even the smallest attempt to save any portion of the timber, the weather having been, on the contrary, peculiarly favourable, for that season of the year, for at least making the experiment.

At the time of the second survey things had materially altered for the worse, and from what the surveyors call "the fearful extent" to which the vessel was hogged, the timber had become "so severely jammed," that, in their opinion, it was impossible to save it without cutting the decks. Now, assume for the moment that the cargo was in such a condition at this time that it might be regarded as totally lost, if previously a portion of it, at least, might

have been saved by the exertions of the captain acting for the assured, and he chose not to make the slightest attempt to save it, how can the assured recover from the underwriters a loss which was made total by their own negligence?

This, in itself, would be an answer to the claim of a total loss upon the policy of the timber. But it is very doubtful whether, at the time of the second survey, there really was a total loss. It is true that it was the opinion of the surveyors that the cargo could not be saved without cutting the ship's decks and beams, and the captain said, "If they had attempted to get at the cargo by cutting the ship, with the weather they had at the time, he didn't think they would have saved any of the ship or cargo." The captain here again makes the state of the weather an obstacle to doing what was necessary for saving the cargo, but it has been clearly shewn that this excuse cannot avail him.

If there was nothing in the state of the weather to prevent the operation of cutting open the decks, what reason was there for not resorting to it? When a ship and cargo are in peril of being lost, the captain is called upon to act for the benefit of all concerned, and he is not at liberty to prefer the interests of one of the parties to another. In this case, his tenderness to the ship might have arisen from his being a part-owner uninsured, but, at all events, there was no reason why she should have been spared if her sacrifice were necessary to the safety of her cargo. She was a hopeless wreck, and was sold at the auction in that character and by that description.

Can it be said that the captain was doing his duty, either to the owners of the cargo or to the underwriters, by not opening this wreck in order to obtain access to the cargo, by the only mode in which it was supposed at this time that it could be saved? But even at the period of the second survey, if any effort had been made by the captain to get at the cargo, some portion of it might have been saved without cutting open the decks. He states, indeed, in his evidence, that "he didn't think he could have got out a single log of the cargo without destroying the ship, and that if the timber ports had been opened she would have filled with sand." But,

after the auction, the purchaser, according to the evidence of the person employed by him, discharged almost the whole of the cargo through the hatchways and out of the ports, without apparently experiencing any extraordinary difficulty, except that a longer time was occupied in unloading the timber than would have been required under ordinary circumstances. Whether the timber was taken out of the hatchways without cutting open the decks is not stated. It is said that during the thirty-six days employed on the work the weather was unusually fine, but this has been abundantly shewn to have also been the case between the first and second surveys.

Their Lordships are of opinion that there was no time between the grounding of the *Northland* and the sale by auction, at which the assured were entitled to treat the cargo as having been totally lost. They have already adverted to the absence of even the smallest attempt on the part of the captain, after the first survey, to save the cargo, and to the extreme probability that, with the favourable weather which occurred afterwards, and before the ship was hogged to such an extent as that the timber became "severely jammed," a considerable portion of it would have been obtained. This omission of the captain to take any steps towards saving the cargo, at a time when it was probable that his endeavours would be successful, in their Lordships' judgment, precludes the assured from claiming for a total loss of the cargo, into whatever condition it might have been brought afterwards. But even at the time of the second survey, as the *Northland* had then become a perfect wreck, there was no reason for sparing her; and if the timber could not be got out without cutting up the decks, their Lordships think that the captain, who is bound where there is danger of loss of ship and cargo to act for the benefit of all concerned, ought to have treated the ship as utterly lost, and to have regarded only the interests of the owners of the cargo and of the underwriters.

As far, therefore, as the judgment of the Recorder applies to the policy upon the cargo, their Lordships are of opinion that he came to a right conclusion that the assured were not entitled to recover.

With respect to the policy on disbursements, their Lordships cannot agree with the Recorder's judgment. The disbursements were advances made by the charterer to the captain of the *Northland*, to be paid out of freight which would not be earned except by the arrival of the vessel at Madras. There can be no doubt, upon the authority of the case of *Drooge v. Stuart* (12), decided by the Judicial Committee on the 15th of July last, that the sums borrowed by the captain from the charterer at the port of loading, to be repaid by deductions from the freight, must be considered as advances of freight, and that the charterer had therefore an insurable interest. The possibility of freight being earned by the *Northland* was, of course, at an end when she was reduced to a wreck, and the case became one of total loss. It was argued on the part of the respondents, that the captain might have hired another vessel and forwarded the timber to its destination, and so have earned freight out of which the disbursements might have been paid. But even supposing that the advances made upon the original freight would attach upon the freight thus acquired, the captain is not under an absolute obligation to trans-ship a cargo when a ship is disabled from pursuing the voyage insured, but may exercise his discretion upon the subject. And while the ship was unquestionably a wreck, and utterly incapable of conveying the goods to their destination, and so earning freight, the assured gave notice of abandonment to the underwriters (which their Lordships have determined to be a good notice), and at this time there is no doubt there was a total loss of the disbursements which were to be paid out of freight.

Their Lordships, therefore, will recommend to her Majesty that the judgment appealed from be varied so far as relates to the policy on disbursements, and that it be declared that the appellants are entitled to recover on that policy, with so much costs of suit, as, according to the course of the Court below, he would have been entitled to if the judgment had been given for him on that policy, and that in respect of the other policy, the judgment

be affirmed; and that the cause be remitted to the Court below, in order that a final decree be made in accordance with the above declarations. Their Lordships think there should be no costs of the appeal on either side.

Attorneys—J. M. Uphill for appellants; Uptons, Johnson & Upton, for respondents.

1869. { DIRK GYSBERT VAN BREDA,  
Dec. 11, 18. { appellant; JOHAN CONRAD  
SILBERBAUER, respondent.\*

*Cape of Good Hope — Ordinances of Court of Policy; Effect of—Roman-Dutch Law.*

*By the Roman-Dutch law, ordinances of the Governor and the Court of Policy at the Cape of Good Hope form part of the *lex scripta* of the colony.*

*A landowner in the colony petitioned the Governor and Court of Policy to be relieved from certain ordinances made in respect to the right to the flow of certain water from his land into and upon the land of certain adjoining landowners, but "offered" to permit the flow of the water, subject to certain restrictions. By an ordinance of the Governor and Court of Policy, it was resolved to release the landowner from the former ordinances, and to accept the "offer" contained in his petition:—Held that, inasmuch as the legislature could only modify an existing law by passing a new law, such ordinance, though informal, had the force of law.*

This was an appeal from a judgment of the Supreme Court of the colony of the Cape of Good Hope.

The action was brought in the Supreme Court by the respondent, the proprietor of a mill known as the Government Gort Molen, in Table Valley, against the appellant, the owner of a landed estate called Oranjezicht, in Table Valley, and against the Commissioners of the municipality of Cape Town.

The declaration alleged that in October, 1805, the Governor and the Council of

\* Present, Lord Chelmsford, Sir J. Colville, and Sir J. Napier.

Policy of the colony sold to one Johannes Jacobus Smuts, in freehold, a mill in Table Valley, known as the Government Mill, with certain land annexed thereto, as by the deed of grant of the said mill would appear. That at the time of the sale and for a long time before, the mill was supplied with, and of right entitled to, a certain supply of water. That the mill was so supplied by means of certain streams of water which formed a junction above the mill, and then ran down a ravine, and turned the mill-wheel. That among the streams forming the aforesaid junction were the Platteklip stream, the Lemmetges stream, the Verlatenbosch stream, and the stream flowing from the Vineyard spring. That the point of junction was in the ravine forming the bed of the Platteklip stream. That some of the aforesaid streams took their rise from certain springs on certain lands the property of the defendant Van Breda, and which had been for a length of time the property of his progenitors, and others of the streams, though not rising on such lands, flowed over them. That by law arising from divers regulations of the Governor and Court of Policy of the colony, bearing date, as in the declaration mentioned, the owners for the time being of the lands of the defendant Van Breda, were bound, after making a certain prescribed use of the water rising in or out of the said lands, or flowing over them, to allow the remainder, being a principal portion thereof, to run down to the Government Mill aforesaid, and after turning or contributing to turn the wheel thereof, to serve other purposes not necessary to be mentioned. That, independently of the Government regulations, a right of servitude existed, whereby the Government mill aforesaid, either solely and with other tenements, was entitled to receive the surplus waters arising in the lands of the said defendant, or flowing through the same. That with reference to the Vineyard spring, by a judgment of the Court, on the 1st day of February, 1859, made in a suit in which the firm of Prince, Collison & Co., the then proprietors of the said mill, were plaintiffs, and the present defendants were defendants, it was ordered and decreed that the said plaintiffs were entitled to receive and

should receive a supply of 30,000 gallons of water per diem throughout all the periods of the year, to be conveyed from the main reservoir on the place Oranjezicht to the Platteklip ravine, whence the water might flow down to the mill of the plaintiff, as by reference to the said judgment would appear. That on the 30th day of April, 1865, the plaintiff became the owner by purchase of the said mill, with all the right, title, and interest which were of the said Johannes Jacobus Smuts, and the said mill was duly transferred to the plaintiff on the 1st day of June in the same year. That the defendant Van Breda having entered into some agreement with the other defendants, the defendants had, at various times, between the 1st May, 1865, and 11th November, 1865, in violation of the regulations aforesaid, and the rights of the plaintiff arising from prescription, turned away from the ravine a large portion of the water which had run from the springs aforesaid to the mill, and in particular the plaintiff alleged that the water from the Lemmetjez spring, with the Velatenbosch stream, had been altogether diverted from the mill. That the defendants had not, since the 1st of May, allowed a supply of 30,000 gallons of water to flow from the main reservoir on Oranjezicht to the mill of the plaintiff. That by reason of such diversion of the water the plaintiff had sustained damage to the amount of 500*l*. That even if defendant Van Breda was entitled to use for his own lands so much water as the irrigation might require, yet he was not entitled to sell or give away, for purposes unconnected with the irrigation or other benefit to his own land, any of the waters aforesaid, to which or to so much of which as the defendant, Van Breda, did not require, the plaintiff in virtue of his mill was entitled; and the plaintiff prayed that the defendant might be condemned in the said sum of 500*l*., and also interdicted from diverting the aforesaid streams in the manner in which they had been diverted, or any other manner, and that they might be condemned to restore the streams to the channels through which they were accustomed to flow before the diversions complained of.

NEW SERIES, 39.--PRIV. COUN.

On the 5th day of February, 1866, the defendants filed their plea, taking issue generally on the allegations contained in the declaration.

At the trial, before the Supreme Court, it was proved that the plaintiff was in possession of the mill, situated in Table Valley, known as the Government Gort Molen. That this mill is on the Platteklip stream, and is worked by the water which comes to it down that stream. That the said mill was originally built by the Government of the colony. That the appellant was the proprietor of an estate called Oranjezicht, situated higher up Table Valley than the mill of the plaintiff, extending up to the slopes of Table Mountain. That the estate of Oranjezicht comprises lands granted in freehold at different dates to the ancestors of the appellant by the Governor and Council of the Cape of Good Hope, viz., in December 1st, 1709, December 11th, 1744, January 12th, 1751, and August 22nd, 1769. That the grant of August, 1769, was made to Michael Van Breda, an ancestor of the appellant, and contains no reservation of any water rights. That rising within and flowing through the lands contained in the grant of August, 1769, is a stream of water known as the Lemmetges stream. That a transverse cut through the lands of the appellant, connects the bed of the Lemmetges stream with the ravine or bed of the Platteklip stream, above the mill of the plaintiff. That in winter the Lemmetges stream, if not intercepted for purposes of irrigation or otherwise on appellant's lands, is able to reach the Platteklip through this cross cut. That in summer for a short time after heavy rains, which are rare at that season, the Lemmetges stream is of sufficient volume to reach the Platteklip. But in some summers, even when unimpeded, it is not strong enough to reach the cross cut. That another stream, called the Vineyard spring, rises on the land forming part of Oranjezicht, and also falls into the Platteklip stream.

Various regulations were from time to time made by the Government for the time being of the colony, in respect of the use of the water of the Platteklip, and of certain of the streams flowing thereinto.

C

By a resolution of the Governor and Council, dated March 1st, 1774, it was resolved and decreed that the water issuing from Table Mountain, and running down through the land granted in freehold to Michael Van Breda in 1769, should not be led out of its course or impeded otherwise than for the garden of the said Breda himself, but then never otherwise than in the morning and evening, from four to seven o'clock, and that he should be obliged during the summer to let the said river water run first along and then downwards, with an angle through his garden into the common ditch to the mill.

By a resolution of the Governor and Council, bearing date the 3rd day of April, 1787, the order of the 1st of March, 1774, regulating the use of the water for the gardens situate in Table Valley, was withdrawn, and it was decreed *inter alia* that the water issuing on this side the Table Mountain for irrigating the said gardens, should in future be used as therein mentioned; to wit, The water coming down through the land granted to Pieter Van Breda, in the year 1769, for the garden of the said Breda, to be made use of daily, but for not longer than from four o'clock in the morning until twelve o'clock at noon; whilst the said Breda shall be obliged to let the river water run during the dry season, first along and then downwards, with an angle through his garden to the mill.

Pieter Van Breda was then possessed of the lands granted in 1769 to Michael Van Breda as aforesaid. Upon the passing of the above resolution he presented a petition to the Governor and Council of Policy, dated November 20th, 1787, which was as follows:—

“To the Honourable Cornelis Jacob van de Graaff, Governor and Director of the Cape of Good Hope and the Dependencies thereof, &c., and the Honourable Council of Policy,

“Sheweth, with due respect, the petition of your humble and obedient servant, the Burgher Lieutenant P. Van Breda.

“That an extract of your Honours' resolution of the 3rd of April of this year having been forwarded to memorialist, containing an altered arrangement and regulation with regard to the use which

may and shall be allowed to be made of the water coming down from Table Mountain, for the service of the gardens lying along the same; that petitioner has seen therein that with regard to the water arising within and flowing down over the land which, in the year 1769, was granted in freehold to his father, the ex-burgherraad Michael Van Breda, and of which the petitioner is now the proprietor, a partial and limited use only of the same was allowed to memorialist, to wit, from four o'clock in the morning till twelve o'clock at noon, with the addition that he (the memorialist) should be bound to allow the river water to flow during the dry season, as before, first along and then with a bend through his garden to the mill.

“That this regulation left undisturbed the arrangements made in the year 1774 regarding the said river water, an arrangement against which memorialist's father at that time already complained to the then Governor of this colony, the Honourable Joachim Van Plettenberg, as greatly tending to open for private and general use a benefit to the use of which memorialist's father, at that time, and now the memorialist, considered himself alone legally entitled, as long as that water does not flow beyond the land in which it rises, as in the grant of that land no condition or exception whatever respecting the use of that water has been made as prescribed, memorialist's father having already allowed at that time, without conditioning any private advantage, that the water of another and very abundant spring, rising in the old ground of his garden, should be led out for the purpose of supplying the inhabitants of Cape Town with drink-water, and also for the Company's and other ships arriving here, but that also, by reason of the repairs which this water-course from time to time requires, memorialist has suffered considerable damage in his crops and plantations, and loss of freedom in his garden from the labourers and the wagons carrying the materials.

“That the complaints which memorialist's father lodged with the said Governor Van Plettenberg having been found well-founded and just, the consequence was that memorialist's father, and memorialist afterwards, have remained in the

free and undisputed enjoyment of the said river water, without any person ever preventing or obstructing it, by virtue of the said resolution of 1774; while, on the contrary, ever since, when the said water was necessarily required during the dry season either for the town canals or for the Company's mill, and he (petitioner) being applied to, when he could spare it without great detriment to himself, he has allowed it to run freely for the above services.

"That petitioner, from the now altered arrangements of 3rd of April of this year, which leave those of 1774 in full force, on the one side, is persuaded that your Honours were unacquainted with, or, at least had not sufficient information of memorialist's complaints against the same, and considering, on the other hand, that, should he now silently acquiesce in the said rules, the consequence for him might be the very injurious result that the garden from which he and his numerous family must derive their support would be deprived for ever of a privilege which has always been annexed to it, and by virtue of which alone the garden can continue to yield the means of support for himself and family.

"That memorialist feels himself thus compelled to bring his grievances again under the consideration of your honour and worships, in the full confidence that you will, as memorialist humbly requests, pay a favourable regard to the same, and, acquiescing in the justice of the complaint, release him from the obligation of complying with that part of the regulation of 3rd April last, which deprives him of the free use of the river-water arising in his own freehold.

"That memorialist, on the other hand, having no desire or intention to avoid the obligation of every member of society to contribute his part towards the prosperity of his fellow men and citizens, but on the contrary, convinced that the above river-water, after having been used by him, should necessarily answer other purposes besides his private ones, is fully ready and prepared to comply therewith, in such a manner as may be done without detriment to his lawful rights, and he hereby offers to allow the said river-water, during the

dry season, to flow without obstruction freely through his garden to the main ditch, not only from the Saturday afternoon till the Sunday afternoon, for the refreshment of the canals of Cape Town, but also to allow the same during every night, that it may be disposed of for general use, *except* when the petitioner shall be compelled, in particular cases, in order to prevent considerable loss, to make use thereof for himself.

"The memorialist, trusting that his offer will be considered sufficient to allow a proper use of the said river-water to others, remains in the certain expectation that it will meet the approbation of your Honour and Worships, and that the said offer, saving his own lawful right, may be a means by which the petitioner may be properly released from the altered regulations respecting the water made by the aforesaid resolution of 3rd of April of this year."

An ordinance of November 20th, 1787, set out the petition and proceeded to provide as follows:—"Whereupon it was taken in consideration that the arrangements enacted by the resolution of 3rd April this year, regarding the use of the water for the gardens in this Table Valley, and in particular that by which the regulation for the garden of the said Breda is made, as merely founded on the former arrangements of 1774, apparently without considering at that time that the river-water, in regard to which the said regulation for the garden of Lieutenant Breda was then made, had its source in a piece of land which was granted in freehold, in the year 1769, to the former proprietor of that garden, late ex-Burgherraad Michiel Van Breda, and which grant was made principally as a compensation for the service which the said Burgherraad Breda had done shortly before to the company and the colony, by allowing that a very abundant and pure spring of water arising in his old land should be built on and led out for the purposes of public use, in such manner as takes place at the present time, and as it is still maintained and kept in repair: so that, because the said Breda had thereby been deprived of the use of the said fountain-water, the use of which he might have retained to himself, as for-

merly, it must also be supposed that, in the grant of the new land in 1769, it was purposely that no condition or exception was made regarding the water rising in that new land, in order that the water might supply the loss suffered by the proprietor of that garden by the leading out of the water of the other fountain.

"And whereas it would be contrary to fairness that the aforesaid Breda should be deprived of the lawful use of the above-mentioned river-water arising in his new ground, which belongs to him in the first place, it has been resolved unanimously to release him from the obligation to obey the regulations respecting that water, made on 3rd April of this year, and on the contrary considered that the offer made by him in the latter part of his petition may be accepted, trusting that, considering the inconvenience which otherwise might arise in the dry season from the absence of that water, he will carefully comply with his above offers.

"Resolved, consequently, to place an extract hereof in the hands of commissioners of the Court of Justice, in order to guide in the observance of the arrangement about the aforesaid water."

On the 8th day of September, 1806, the majority of the Court gave judgment for the plaintiff for 50*l.* damages, and reserved certain points as to the quantum of water to which the plaintiff was entitled. The Chief Justice of the colony dissented, and delivered a judgment in favour of defendants.

On the 15th day of November, 1806, the Court further decreed that the appellant should thenceforth allow the water mentioned in the regulations of the 3rd of April, 1787, called the water coming down through the land granted to Pieter Van Breda in 1769, and also called the river water, being the water now known by the name of Lemmetjeskloof stream, with which the stream now called Verlatenbosch also flows, to flow down without obstruction through the ancient course of the Platteklip watercourse during every night from sunset to sunrise, and on every Saturday from 6 o'clock P.M. to 6 o'clock P.M. on the next day being Sunday, according to the true intent and meaning of the regulations of the Governor and Court

of Policy of the 3rd April, 1787, modified by the offer contained in the petition of Pieter Van Breda, and the acceptance of such offer by the said Court of Policy.

*The Solicitor General and Butt* for the appellant.—The government water regulations do not oblige the appellant to allow the streams to flow down to the plaintiff's mills in the manner claimed. Independently of prescriptive right and of the Government water regulations, the appellant had a right to use and appropriate the water of these streams. If, in virtue of the offer made by Pieter Van Breda in his petition of the 20th November, 1787, the appellant is bound to let any portion of the water run through and pass from his land, the right to the use of such portion of the water was and is vested in the governor and council and their successors, and not in the plaintiff or those through whom he claims. The ordinance of November, 1787, relieved the appellant from the provision of the regulations of April, 1787. They referred to *Voet* (1), *Grotius* (2).

*Sir G. Honyman and Archibald* for the respondent.—The rights of the parties are governed by the regulations of the Court of Policy, which have the force of law. The ordinance of November, 1787, is binding on the appellant. It is in fact part of the law of the colony. At the date of the grant of the 22nd August, 1769, all the water rising in or flowing through the land granted, had been disposed of by the previous regulations. The grant was subject to such regulations. No right to the water was conveyed to Michiel Van Breda by the grant of 1769, but his right and that of his successors is derived from the regulations of 1st March, 1774, modified by the subsequent regulations of the Court of Policy. If the regulations of the Court of Policy are not binding as a legislative "imposition," they constituted a contract with Pieter Van Breda, which is binding on the appellant, and to the benefit of which the respondent, as assignee of the government, is entitled. They referred to *Chase-*

(1) *De aqua et aquæ pluris arcendæ.* 6 Ed. ch. 39. ti. 3.

(2) Dutch Jurisprudence.



more v. *Richards* (3), and the cases there cited.

*Butt* in reply.

*Cur. adv. vult.*

SIR JAMES COLVILLE (on Dec. 18) delivered the judgment of their lordships.—The appellant in this case is the owner of an estate situate in the Table Valley, near Cape Town, called Oranjezicht. It consists of various parcels of land, which were granted to his ancestor, whilst the colony still belonged to the Dutch, by several instruments, of which the most modern, as well as the one most material to the present controversy, is that of the 22nd of August, 1769.

The respondent is the owner of a water-mill, lower down the Table Valley, called Gort Molen, which is worked by means of a stream, or water-course, known as the Platteklip.

The substance of the complaint of the respondent, who was plaintiff in the suit against the appellant, is that the appellant has diverted the waters of certain streams, which would naturally flow, and of right ought to flow, into the bed of the Platteklip, and, from the point of junction with the latter stream, run down and turn the wheel of the respondent's mill.

The streams so alleged to have been diverted are the "Lemmetjes Stream," the "Verlatenbosch," which joins the Lemmetjes, and several streams, which, for the purposes of this appeal, it will be sufficient to treat as comprehended in the description of "the stream flowing from the Vineyard Spring."

The declaration stated that some of these streams take their rise from certain springs situate in the appellant's lands, and that others of them, though not originally rising upon such lands, flowed and ran over the same.

It rested the title of the respondent to the use of these waters—first, upon certain regulations of the Governor and Court of Policy of the colony, dated the 1st of March, 1774; the 3rd of April, 1787; and the 20th of November, 1787; the effect of which was, as the respondent

alleged, to bind the owners of the appellant's lands, after making a certain prescribed use of the water rising in or out of the said lands, or running over them, to allow the remainder, being a principal part thereof, to run down to the mill; and, secondly, upon a right of servitude by prescription.

It set up a further title to the waters of the stream flowing from the Vineyard Spring under a judgment pronounced in a suit wherein a firm of Prince, Collinson, and Company, the former proprietors of the mill, were plaintiffs, and the appellant and his co-defendants were defendants. Whereby it was ordered and decreed that the said plaintiffs were entitled to receive, and that they should accordingly receive, a supply of 30,000 gallons of water per diem, throughout all the periods of the year, to be conveyed by means of an adequate conduit-pipe at the expense of the defendants, from the main reservoir on Oranjezicht to the junction of the Platteklip ravine, and the cross cut below the vineyard of the said appellant, whence the said water might flow down the said ravine to the mill of the said respondent.

The declaration further stated that the appellant had entered into some arrangement with the commissioners of the municipality of Cape Town, who were also made defendants to the suit, whereunder, by means of pipes and other contrivances, they had diverted from the bed of the Platteklip and the mill aforesaid a large portion of the water which had run and proceeded from the various springs and streams aforesaid to the mill aforesaid; and in particular that the water arising from the spring called the Lemmetjes Spring had, since the 1st of May, 1865, been altogether turned away from the bed of the Platteklip and the mill.

It further stated that, since the 1st of May, 1865, the defendants had wrongfully and unlawfully kept back and prevented the respondent's mill from receiving the 30,000 gallons of water which, by the previous decree, they were ordered to allow to pass daily to the mill.

It insisted that even if the appellant was entitled to use for his own lands so much of the waters of the said springs and streams as the irrigation thereof might re-

(3) 2 Hurl. & N. 168; s. c. 26 Law J. Rep. (N.S.) Exch. 373; House of Lords, 29 Law J. Rep. (N.S.) Exch. 81.

quire (which the respondent did not admit), he was not entitled to sell, as he had done, the same for purposes unconnected with the irrigation or other benefit of his own lands.

And in respect of the wrongs complained of, the respondent claimed damages; and a perpetual interdict restraining the defendants from diverting the water of the several streams, and an order condemning them to restore the several streams to their original and accustomed channels.

The commissioners for the municipality of Cape Town, though defendants in the Court below, have not joined in this appeal.

The defendants put in issue every allegation of fact and conclusion of law contained in the pact.

Several orders have been made by the Court in the suit. By the first, which bears date the 2nd of March, 1866, it was ordered that the water-course of the Verlatenbosch and Lemmetjes streams be reasonably cleared of obstructions, and the water be allowed to flow every Saturday from six o'clock in the evening till six o'clock on Sunday evening, and on every other day from sunrise to sunset for a fortnight in order to test whether, if so allowed to flow, the water of these streams would reach the Platteklip water-course.

On the 8th of September, 1866, the Court gave judgment for the respondent for the sum of 50*l.* as damages with costs of suit, reserving certain points as to the quantities of water to come down, to be thereafter adjudged by the Court; and on the 15th day of November, 1866, it further ordered, adjudged, and decreed that the appellant should thenceforth allow the water in the regulations of the 3rd of April, 1787, called the water coming down through the land granted to Pieter Van Breda in 1769, and also called the river water, being the water now known by the name of the Lemmetjes Kloof stream, with which the stream now called the Verlatenbosch stream also flows, to flow down without obstruction through the ancient course to the Platteklip water-course, during every night, from sunset to sunrise, and on every Saturday from six o'clock P.M. to six o'clock P.M. on the next day, being Sunday, according to the true intent and meaning of the regulations of

the Governor and Court of Policy of the 3rd of April, 1787, modified by the offer contained in the petition of the Lieutenant Van Breda in 1787, and the acceptance of such offer by the said Court of Policy.

The present appeal, if in terms it originally covered more, has, in the argument at the bar, been limited to the last-stated order. The first order was merely an interlocutory proceeding for the purpose of ascertaining the flow of the Lemmetjes and Verlatenbosch streams, if after their junction they were allowed to flow towards the Platteklip. And no question is here raised as to the propriety of what has been decided by the second order which relates exclusively to the stream flowing from the vineyard, to the respondent's rights in respect of that stream as they were defined by the former decree, and to the damages recoverable for the breach of that decree.

It is obvious that the third order which is now the sole subject of appeal, is based upon two assumptions: first—that the regulations of the Governor and Court of Policy in the matter of this water have the force of law in the colony; and secondly—that upon the true construction of the particular regulations referred to, the appellant is under an obligation, enforceable at the suit of any person aggrieved by the non-performance of it, to allow the water in question to flow in the manner prescribed by the order.

The first of these propositions has hardly been contested. Under the Dutch Government the Governor and the Court of Policy were the sole legislative power in the colony. That their ordinances, including these very water regulations, however inartistically framed, do, unless modified or repealed by subsequent legislation, still form part of the *lex scripta* of the colony, appears from the volume of the statute law recently published by the Cape Government. It appears from the regulations printed in the record, that in the exercise of their legislative power the Governor and Court of Policy did, at least from 1861, by positive ordinance regulate the use of the streams watering the Table Valley, whether arising in that valley or descending from the Table Mountain. Their object seems to have been to give to the upper riparian proprietors the

fullest use of these streams for irrigation which was compatible with the rights and interests of those below, and in particular with the due supply of water to what is designated the Honourable Company's mill, being a mill on the Platteklip, above the site on which the respondent's mill now stands. In doing this they may sometimes have restricted, and sometimes have extended the rights which, apart from special ordinance, those proprietors would have had under the general law. Whether their power to do this was specially reserved to them by the clause touching "impositien en geregtigheden" which appear to have been ordinarily inserted in their grants of land is not a material question, for if the ordinances have, as they are admitted to have, the force of law, they must be obeyed, though they may have derogated from the rights of individuals.

The legislation touching the particular streams which are now in question was, so far as it need be stated, as follows:—By the regulation of the 1st of March, 1774, made pursuant to the report of certain members of the council, it was ordered that "The water issuing from the Table mountains, and running down through the land granted in freehold to Van Breda in 1769, might be led out of its course, or otherwise impeded for the gardens of the said Breda himself; but also never otherwise than in the morning and evening, from four to nine o'clock, and that he (Breda) should be obliged during the summer season to let the said river water run first along, and then downwards, with an angle, through his gardens, into the common ditch (admitted to be the Platteklip) to the mill.

In April, 1787, it was resolved, upon a further report of persons deputed to enquire into the whole subject of the water-courses in the Table Valley, to withdraw the order of the 1st March, 1774, in respect of the regulated use of the water for the gardens situate in the Table Valley, and to substitute other provisions.

The provision relating to the waters in question was as follows:—"The water coming down through the land granted to Pieter Van Breda in the year 1769, for the garden of the said Breda to be made use of daily but not longer than

from four in the morning until twelve o'clock at noon; whilst the said Breda shall be obliged, as heretofore, to let the river water run during the dry season, first along, and then downwards, with an angle, through his garden to the mill."

On the 20th November, 1787, the Lieutenant P. Van Breda, the ancestor of the appellant, then in possession of Oranjezicht, presented a petition to the Governor and Court of Policy, praying for relief against the provisions of the last-stated ordinance. The petition, after stating certain representations made by the petitioner's father against the ordinance of 1774, and that in consequence of such representations that ordinance had never been enforced against him; and complaining of the probable effect of the ordinance of the 3rd of April, 1787, upon his garden, contains the following passages:—[His Lordship read the material part of the memorial.] The ordinance of November, 1787, states his petition *in extenso*, and then proceeds as follows:—[His Lordship read the ordinance.] The question upon this part of the case is whether, as the respondents contend, this last stated document was in the nature of a law imposing upon Van Breda and his successors the legal obligation to allow the water to flow in the manner stated in his offer; or whether, as the appellant contends, it simply relieved him from the obligation to obey the regulations of the 3rd April, 1787, leaving him free to comply with his offer or not, as he might see fit.

The question is not free from difficulty; but their Lordships have come to the conclusion that the former is the true and reasonable construction of the document under consideration. Nothing can be more informal than the mode in which, as the other regulations shew, the Governor and Court of Policy exercised their legislative power. Their Lordships must look to the substance of the transaction. Here was a man subject to a written law, who came forward to complain of its provisions by petition to the legislature; and offering to do certain things "as the means whereby he may be released" from those provisions. The legislature accepts his offer, and resolves to release him from the obligation to obey the regulation of which

he complains, trusting that he will comply with his offer. Now the legislature could only modify an existing law by passing a new law, and therefore the document, whatever be the true construction of its terms, must be treated as an ordinance having the force of law. And the reasonable construction of it seems to their Lordships to be,—that it substitutes for the obligations which the former law had imposed upon Van Breda for the benefit of the public the obligation to do that for the benefit of the public which was expressed in his offer. It may be that if he failed to perform this obligation he would not incur the penalties which were imposed on those who disobeyed the general regulations; but the obligation was nevertheless one which any person aggrieved by its non-performance could sue to enforce. Their Lordships are fortified in this construction by the final clause, wherein it is resolved to place an extract of the proceedings “in the hands of the Commissioners of the Court of Justice, in order to guide in the observance of the arrangement about the aforesaid water.”

This being their Lordships' view, they deem it unnecessary to consider the various other questions raised in the argument before them. If the last regulation had not incorporated, so to speak, the offer, and thereby defined the legal obligations of Van Breda—if it had merely released him from the obligations of the first regulation of 1787, and left him to his rights over the water, under the general law it could hardly be contended that it conferred upon him affirmatively the right to divert the water for purposes other than that of irrigation, or to sell it in violation of the rights which the lower riparian proprietors might have under the general law. The question would then arise, what the latter rights are? And this is a question for the satisfactory decision whereof the record, as sent home, does not afford the requisite materials.

In the first place, there is not a sufficient *constat* whether as a matter of fact the Lemmetjes and Verlatenbosch do or do not rise on the appellant's land. The balance of the evidence given in the cause seems to be in favour of the conclusion that they do so rise; and this is in some

measure confirmed by the last regulation of 1787. But two of the learned judges below dispute this; founding their conclusions, somewhat irregularly as it appears to their lordships, upon their personal knowledge, derived either from a personal view of the locality, had in the former suit, or from a recollection of the evidence taken in that suit. Again, their lordships have not before them the particular texts in *Voet* upon which all the judges seem to concur in holding that, if the streams do rise in the appellant's land, he is by the law of the colony entitled to do what he pleases with their waters. Their lordships are not satisfied that this proposition is true without qualification; or that by the Roman-Dutch law as by the law of England the rights of the lower proprietors would not attach upon water which had once flowed beyond the appellant's land in a known and definite channel, even though it had its source within that land. Another issue of fact, disputed at their lordships' bar, would have arisen on this point.

Their lordships, however, are relieved from the necessity of considering these questions, since the consequence of their construction of the regulations is that they must humbly recommend Her Majesty to affirm the decree under appeal with a slight modification to be now stated. That modification consists in the insertion of the words “during the dry season” between the words “henceforth” and “allow.” The addition of these words will make the order literally comply with the terms of Van Breda's offer in November, 1787.

The order will then leave the appellant free to make what use he pleases of the water (and the use actually made of it is apparently one for the benefit of the public) at seasons when it cannot be required to swell the waters of the Platteklip. Their Lordships, however, are of opinion that this slight variation in the form of the decree which is probably not inconsistent with the intention of the Court below, ought not to relieve the appellant from paying the costs of this appeal.

Attorneys—Venning, Robins & Venning for appellant; Nash, Field & Layton, for respondent.

1870.  
Jan. 25.

{ GALE WENTWORTH BOSTON AND  
OTHERS, appellants; SIME-  
ON LELIEVRE AND OTHERS  
(Seigniorial Revising Com-  
missioners), respondents.\*

*Lower Canada—Court of Queen's Bench—Appeal from Superior Court—Writ of Certiorari—Seigniorial Acts—Consolidated Statutes of Lower Canada, c. 77. s. 23; c. 88. s. 17; c. 89—Construction.*

*By the Consolidated Statutes of Lower Canada, c. 77. s. 23, it is provided, "That an appeal shall lie to the Court of Queen's Bench as a Court of Appeal and Error from any judgment rendered by the Superior Court for Lower Canada in any district, in all cases where the matter in dispute exceeds the sum of 20l. sterling."*

*Chapter 88. s. 17, provides, "That an appeal shall lie to the Court of Queen's Bench, sitting in appeal, from all final judgments rendered by the Superior Court after the 30th day of June, 1858, in all cases provided for by that Act and chapter 89 of these Consolidated Statutes, except in cases of certiorari."*

*Chapter 89 provides for proceedings upon writs of prohibition, certiorari, and scire facias, and section 6 states that "appeals from final judgment rendered under the Act, except in cases of certiorari, are provided for by chapter 88."*

*In a proceeding under the Seigniorial Acts of Lower Canada, the appellants obtained from the Superior Court a writ of certiorari to bring the proceedings into the Superior Court, which Court afterwards quashed the writ:—Held, first, that the Consolidated Statutes must be treated as one great act, and that the several enactments ought to be construed collectively, and with reference to one another; secondly, that the writ of certiorari is governed by the provisions of chapter 88, and that no appeal will lie in such a case from the judgment of the Superior Court to the Court of Queen's Bench.*

This was an appeal from the Court of Queen's Bench for the province of Quebec, Canada.

The appellants were the executors of one John Boston, who was at the time of

\* Present—Lord Westbury, Sir J. Colville, and Mr J. Napier.

TRINIS, 39.—PRIV. COUN.

the passing of the Seigniorial Act, 1854, and continued till his death, the owner of two Seigniories, called the Seigniories of Thwaite and St. James.

The respondents were the Revising Commissioners appointed under the said Seigniorial Act of 1854.

In the year 1854, a provincial Act, 18 Vict. c. 3, was passed, under the title of "The Seigniorial Act, 1854," for the abolition of feudal rights and tenures in Lower Canada.

By this Act, the Governor was empowered to appoint Commissioners to value the feudal rights in each Seignior, and to draw up a Schedule, containing, amongst other particulars, the yearly value of the seigniorial rights upon each parcel of land in the Seignior.

By section 12, the Governor was authorised to appoint four of the Commissioners Revising Commissioners, of whom any three were to form a Court for the revision of the Schedules made under the Act; and by section 13, the decision of any two of such Commissioners was to be final.

Accordingly, Henry Judah, one of the Seigniorial Commissioners appointed under the Act of 1854, proceeded to prepare a Schedule for the said Seigniories, and the said John Boston thereupon filed before him a claim setting out the special facts relating to the Seigniories of Thwaite and St. James above referred to, and claiming to be entitled to an indemnity for special rights belonging to him beyond those possessed by other Seigniors of the value of a capital sum of 16,200l.

On April 16, 1857, the said Henry Judah, after hearing all objections that were taken to the Schedule which he had prepared for the Seignior of Thwaite, pronounced a judgment or order making certain alterations therein, but rejecting the claim of the said John Boston *in toto*, and declaring the Schedule closed. On the same date, the said Henry Judah made a similar judgment or order in the matter of the Seignior of St. James.

The said John Boston thereupon applied to the Revising Commissioners, appointed under the 12th section of the Seigniorial Act, 1854, above mentioned, for the revision of each of the said Schedules, and

D

on the 29th of May, 1861, the respondents, by the three Commissioners before whom the Appeal was heard, gave judgment on the Schedule relating to the Seignior of Thwaite, substantially confirming the judgment of Henry Judah, on the ground that the Seigniorial Court had decided that the rights for which the said John Boston sought to be indemnified as Seignior could not exist.

On the same date the respondents also pronounced a similar judgment in the matter of the Seignior of St. James.

The said John Boston thereupon procured a writ of *certiorari*, to be issued out of the Superior Court of Lower Canada, to remove all the proceedings before the respondents into the Superior Court.

On December 20th, 1861, the Attorney General for Lower Canada entered an appearance, and obtained a rule *nisi* to quash the said writ.

On the 21st of February, 1862, John Boston obtained a rule *nisi* to quash the judgment rendered by the respondents on the 29th of May, 1861.

The two rules came on for argument together, before Mr. Assistant Justice Monk, who, on the 27th of June, 1862, gave judgment, making absolute the rule for quashing the writ of *certiorari*, on the grounds that there did not appear to have been any excess of jurisdiction on the part of the respondents, and that their judgments could not be questioned by writ of *certiorari*.

On the 28th of November, 1862, John Boston having died, the appellants, as his executors, issued out a writ of appeal from this judgment in the Court of Queen's Bench for Lower Canada.

By the Consolidated Statutes of Lower Canada, c. 77. s. 23, it is enacted, "That an appeal shall lie to the Court of Queen's Bench, as a Court of Appeal, and Error from any judgment rendered by the Superior Court for Lower Canada in any district, in all cases where the matter in dispute exceeds the sum of 20*l.* sterling, or relates to any fee of office duty, rent, revenue, or any sum of money payable to her Majesty, or to any title to lands or tenements, annual rents, or such like matters or things where the rights in future may be bound, although the imme-

diate value or sum in appeal is less than 20*l.* sterling."

The 88th and 89th chapters of the said statutes relate respectively to the protection and enforcement of corporate rights, and to writs of prohibition, *certiorari* and *scire facias*, and by section 17 of the former statute, it is enacted, "That an appeal shall lie to the Court of Queen's Bench, sitting in appeal, from all final judgments rendered by the superior Court after the 30th day of June, 1858, in all cases provided for by that Act and chapter 89 of these Consolidated Statutes, except in cases of *certiorari*."

On the 5th of September, 1863, a motion was made on behalf of the Attorney General for Lower Canada intervening, to quash the writ of appeal which had been issued by the appellants as above-mentioned, on the ground that there was no appeal from a judgment quashing a writ of *certiorari*, and that the judgment of the Court below was final.

On the 6th of September, 1864, the Court of Queen's Bench, after hearing counsel for the appellants, respondents and party intervening, gave judgment quashing the writ of appeal on the ground that the law did not allow an appeal to that Court from the judgments rendered by the superior Court on writs of *certiorari* issued out of it.

The appellants thereupon moved the said Court of Queen's Bench for leave to appeal to Her Majesty in Council, but the said Court on the 1st of December, 1864, rejected the motion with costs.

The appellants then presented a petition to Her Majesty in Council for special leave to appeal from the said judgment of the 6th of September, 1864, and also from the said orders or judgments of April 16th, 1857; May 29th, 1861; June 27th, 1862; and December 1st, 1864; and by an order in Council, dated the 27th day of November, 1865, leave was given to the appellants to enter and prosecute their appeal from the said several judgments and orders.

*Bompas* (Sir R. Palmer with him).—The judgment quashing the writ of *certiorari* is erroneous. The Consolidated Statutes of Lower Canada, by chapter 77, section 23, expressly provide that an

appeal shall lie to the Court of Queen's Bench as a Court of appeal from any judgment rendered by the superior Court of any district in all cases where the matter in dispute exceeds the sum of 20*l*. A writ of appeal therefore lies to the Court of Queen's Bench from all judgments of the superior Court. The matter in dispute in this case is admitted to be of much greater amount than 20*l*. The writ of *certiorari* is not the creation of any colonial statute. It is the ordinary writ of *certiorari* in use in the Courts in England. It is therefore subject to all the incidents of that writ. The provisions of statute 88, section 17, were intended to extend the right of appeal in the case of prerogative writs to judgments in cases where the matters in dispute were of a less value than 20*l*. They are not within the terms of this statute. The exception made in that statute of writs of *certiorari* does not alter or take away the general right of appeal.

The Solicitor General (Sir J. D. Coleridge) and Wills, for the respondents.—The writ of *certiorari* in this case is the ordinary writ of *certiorari*, and is subject, without doubt, to all the incidents of that writ, but the Consolidated Statutes expressly negative the right of appeal in cases of *certiorari*. The law is therefore express upon this subject. The terms of the enactment contained in the Consolidated Statutes, c. 77, giving a general power of appeal from the superior Court to the Court of Queen's Bench, do not apply to a writ of *certiorari*. The right to appeal is not therefore an incident of a writ of *certiorari* in Lower Canada. It is said that the provisions contained in c. 88 only apply to final judgments. If this be so, this is a final judgment. They referred to 2 *Wm. Saunders*, 101 x. *Corner's Crown Practice title Certiorari*, and to the Consolidated Statutes of Lower Canada, cc. 77, 88, 89.

*Bompas* in reply.

LORD WESTBURY delivered the judgment of their Lordships.—Their Lordships are not insensible to the importance of this case. At the same time they feel that they would not act rightly if they were to overrule the unanimous judgment of the

Court below, upon a question of this nature, unless they were perfectly satisfied that the Judges had committed an error in refusing the exercise of their Appellate jurisdiction.

The question is governed entirely by the language of the statutes. The Court of Appeal in Canada is the creation of statute, and the subjects upon which Appeal lies to that Court are defined with reasonable clearness. The jurisdiction of the Court existed before the Consolidated Statutes, but the Consolidated Statutes annulled all the antecedent statutes upon the subject. The Consolidated Statutes may be treated as one great Act, and their Lordships think it would not be wrong to take the several chapters as being enactments which are to be construed collectively, and with reference to one another, just as if they had been sections of one statute, instead of being separate acts.

The material sections to which their Lordships' attention has been directed by the able arguments they have heard, are the 23rd section of chapter 77, and chapters 88 and 89. The 23rd section gives generally a right of appeal to the Court of Queen's Bench from any judgment pronounced by a Superior Court, in all cases where the matter in dispute exceeds the sum of 20*l*. sterling.

The Solicitor-General admitted that if this section stood alone, the matter in dispute here might fairly be taken as involving the determination of a matter of property exceeding 20*l*.; but he directed our attention to the two subsequent chapters, which are most important, namely, the 88th and 89th chapters.

The 88th chapter, in section 17, gives an appeal from all final judgments rendered by the Superior Court after the 30th of June, 1858, in all cases provided for by that chapter and chapter 89, except cases of *certiorari*.

The cases provided for by chapter 89 are cases of writs of prohibition, of writs of *certiorari*, and of writs of *scire facias*.

The fact, therefore, which has to be inquired into is:—Did this writ of *certiorari* fall under the provisions of chapter 89; for if it did, the exception applies.

But there can be no question that the

chapter 89 gives the rule under which writs of *certiorari* shall for the future issue, be treated, and decided. It is the code of procedure with reference to that particular writ. It simplifies the proceedings under it, and makes them correspondent with proceedings in ordinary cases.

Therefore, the writ of *certiorari* here was provided for by that particular enactment.

The chapter 89 repeats, "Appeals from final judgments rendered under this Act, except in cases of *certiorari*, are provided for by chapter 88." It expressly refers, therefore, to the antecedent chapter for the purpose of making the directions given in that chapter applicable, by the express words of the reference, to all cases provided for by the statute.

Their Lordships, therefore, are of opinion that the *certiorari* in this case must be considered as governed by chapter 89; and if so, then to have been excepted from appeal.

This is the ground upon which it appears to their Lordships that the judgment of the Court below can and ought to be supported.

Their Lordships would hesitate very much to interfere with the unanimous judgment of the Court below upon a matter of this kind, which is to be regarded as a matter of procedure only, unless they were clearly satisfied that the Court had made a great mistake in the construction put upon these statutes. They think that construction is more in conformity with general principles of law upon the subject of these writs, and they think also that it is a construction which they are compelled to affirm by the interpretation they are obliged to put upon the meaning, intent, and object of chapter 89; and holding, as their Lordships are obliged to do, that this case fell under the regulations of that statute, they will humbly advise Her Majesty to affirm the order of the Court below and to dismiss the Appeal.

*Sir Roundell Palmer.*—Your Lordships will remember the very peculiar position in which this case comes before you. It is only a part of an appeal heard in the first instance by special order.

[LORD WESTBURY.—We do not prejudice anything else that remains to be done, but we consider this as if it were a special case raising a particular question which it is convenient to dispose of *per se*. In that manner the appeal has been presented to us and in that way we shall report to Her Majesty.]

Your Lordships will deal only with the appeal from that particular order which quashed the writ and the order affirming the appeal from it.

[LORD WESTBURY.—Their Lordships will be disposed to deal with this appeal as if it were a special case raising an appeal to us on this simple question. Does an appeal lie in a case of a writ of *certiorari* to the Court of Queen's Bench from the order made by the Superior Court?]

So I understand, your Lordship. Our appeal is from several orders, the last of which is the only one your Lordships have been dealing with. Therefore your Lordships' judgment only will deal with the last order.

[LORD WESTBURY.—Yes; it will not affect the other appeals. SIR J. COLVILLE.—It is without prejudice to the rest of the appeals.]

*The Registrar.*—Your Lordships directed the sum of 300*l.* to be deposited to meet the expenses of the appeal. If the costs of this appeal are now given, they will be paid out of that 300*l.*, and the sum will then be exhausted.

[LORD WESTBURY.—We will state that the recommendation we shall finally give to Her Majesty will be,—that, without prejudice to the other questions involved in the appeals which the appellants were permitted to present, and which remain for decision, as to this particular question involved in the present appeal, we shall humbly advise Her Majesty to affirm the order of the Court below *quoad hoc*, and to direct the expenses to be paid by the appellant, the deposit made by the appellant remaining entire to answer the expenses of the rest of the appeal.]

---

Attorneys — Bischoff, Bompas & Bischoff, for appellants; Ashurst, Morris & Co., for respondents.

---



1870.  
Jan. 24, 25.  
Feb. 11.

DAVID DOUGLAS YOUNG AND  
ANOTHER, *appellants*;  
JAMES THOMAS LAMBERT,  
*respondent*.\*

*Lower Canada: Execution creditor — Rights of Pledgor and Pledgee—Delivery of Pledge.*

*Goods shipped at Liverpool for Quebec were taken on their arrival to the examining warehouse, and were entered as consigned to "M. & S.," and were marked "M. & S." By the regulations of the warehouse, consignees were entitled to possession on payment of freight and duty. M. & S. having obtained an advance on the goods from the appellants, signed a request note directed to the officer of the warehouse, directing him to "hold the goods subject to the order of the appellants, they paying duty and storage charged before removal." The officer wrote across the note "accepted," and signed it:—Held, on a seizure under a *fi. fa.* by the execution creditor of "M. & S.," that, by the express agreement of the parties, followed by the acceptance of the officer of the warehouse, there was a valid constructive delivery of the property in the goods to the appellants sufficient for the purposes of the pledge.*

This was an appeal from the Court of Queen's Bench for the province of Quebec, Canada.

The suit was brought to try the right to certain wire rope and other goods, which were taken in execution, on the 17th of June, 1865, by the Sheriff of Quebec, while lying at the government examining warehouse in that city.

The writ under which the goods were seized was issued by the respondent on the 30th of May, 1865, on a judgment obtained by him against Messrs. Maxwell & Stevenson, merchants of Quebec.

To this seizure the appellants, on the 27th of June, 1865, filed an opposition *afin d'annuler*, alleging in effect that the goods had been previously assigned to them in pledge by the said Maxwell & Stevenson as security for an advance of \$1,800, together with interest, commission, and other charges thereon, and

\* Present, Lord Westbury, Sir J. Colville, and Sir J. Napier.

that, at the time of the seizure, the said goods were in their lawful possession as pledgees as security for a sum of \$2,058<sup>4</sup>/<sub>100</sub> to which the whole sum due to them then amounted.

To the opposition so filed, the respondent pleaded the general issue, and also, as a special *exception péremptoire en droit*, that Messrs. Maxwell & Stevenson were, at the time of the advance, notoriously, and to the knowledge of the opposants, insolvent, and had stopped payment, and that the goods pledged constituted their whole estate, and that the transaction was illegal, and in fraud of creditors.

On these pleadings, issue was joined.

Both parties subsequently proceeded to take evidence, when the following were shewn to be the facts of the case:—

The goods in question were sent from Liverpool by the steamer *St. David*, in the summer of 1864, consigned to Maxwell & Stevenson, and, on their arrival at Quebec, were landed and placed in the government examining warehouse on the 6th of August in that year.

The examining warehouse is a part of the Customs department, established under the authority of the Canadian Customs Act (Consolidated Statutes of Canada), c. 17, s. 11, cl. 4, and s. 14, cl. 4.

The routine of the Custom House at Quebec was proved to be as follows:—The master of a vessel arriving produces a manifest or statement of his cargo; and the respective owners of goods possessing bills of lading, or any other legal mark of ownership, pass entries for them. If this is not done, the goods are sent to the examining warehouse as unclaimed; when there, they are held until properly passed through the Customs; that is to say, either the duty paid, or the necessary bond given. When an entry of goods is passed, whether on their first landing, or while lying at the examining warehouse, the duties are paid at the time of such entry, and a permit given for their removal, or a bond is given by their owner for the due payment of the duties, and the goods are then entered in the bonded warehouse book, and placed in some bonded warehouse; the examining warehouse is treated as a bonded warehouse for this purpose, and goods which are there before entry

remain so afterwards. Goods which have been so bonded are not delivered out of the examining warehouse, or other bonded warehouse, without a permit from the head locker. Special statutory provisions are contained in the Customs Act, s. 46, for the transfer by bill of sale of bonded goods, and a book was kept for the purpose of entering such sales.

The whole of the Customs department is under the control of the collector of Customs at the port of Quebec, but the examining warehouse is under the special charge of François Xavier Métivier.

Métivier received no express instructions from the collector to accept any order for the delivery or transfer of goods from the parties owning them, but it was always his custom to do so, and considered by him to be the rule of the office.

Shortly after the goods were bonded and placed in the examining warehouse, Messrs. Maxwell & Stevenson applied to the appellants, who were also merchants at Quebec, carrying on their business under the style of "D. D. Young & Co.," for a loan of \$1,800 upon the security of their goods. The appellants having consented, gave to Messrs. Maxwell & Stevenson their promissory note at three months' date for that amount, and received from them the following document:—  
"\$1,800.

"Quebec, 19th August, 1864.

"Received from D. D. Young & Co., their note at three months' date for eighteen hundred dollars, being an advance on 89 packages of wire rope rigging, marked M. & S., No. 1 @ 89 ex-stmr. *St. David*, and now in H. M. ex. warehouse, said advance to be repaid to D. D. Young & Co., on or before the maturity of their note, together with a commission of 5 per cent. on the amt. advanced. Should the advance not be repaid by that time, D. D. Y. & Co. to have the right of selling the rigging, &c., and paying themselves out of the proceeds.

"MAXWELL & STEVENSON."

Messrs. Maxwell & Stevenson at the same time gave to the appellants the following order on the officer in charge of the examining warehouse:—

"The Officer in charge of H. M.

"Examining Warehouse.

"Quebec, 19th August, 1864.

"Will please hold, subject to the Order of D. D. Young & Co., 13 coils wire rope, Nos. 1 to 13; 1 bag ironwork, No. 14; 74 coils rope, Nos. 15 to 88; and one bale merchandise, No. 89, all marked M. & S., landed from the steamer *St. David*, on her last passage from Liverpool, they paying the duty and storage charge before removal, and oblige,

"Maxwell & Stevenson."

This order was the same day taken by one of the appellants' clerks to the said François X. Métivier above-mentioned, who wrote across it, "accepted, F. X. Métivier," and at the same time wrote opposite the entry of the goods in the warehouse book kept by him, "subject to D. D. Young's order."

Messrs. Maxwell & Stevenson discounted the appellants' note.

Messrs. Maxwell & Stevenson were unable to repay the advance before the note became due; but at their request the appellants consented not to sell the goods, but to continue to hold them as security for their advance, in consideration of being paid an extra commission of 2½ per cent. for an extension of time of three months. Interest was also to be paid at 7 per cent. The appellants accordingly retired the said note at maturity, and continued to hold the goods.

On December 30th, 1864, Messrs. Maxwell & Stevenson duly entered the goods and bonded them. An entry of them was then made in the bonded warehouse book, kept by James Sealey as above-mentioned, but the goods remained in the examining warehouse.

In the month of June, 1865, the three months' extension of time having expired, the appellants prepared to sell the goods, and gave instructions to their brokers, A. J. Markham & Co., to that effect. The sale was, however, stopped by the seizure of the goods in execution as above-mentioned.

The amount due from Messrs. Maxwell & Stevenson to the appellants at the time the goods were seized, was proved to be the sum of \$2,058, <sup>11</sup>/<sub>16</sub> mentioned in the appellants' opposition.

There was no evidence that the state of the affairs of Messrs. Maxwell & Stevenson was known at the time to the appellants.

The case was heard on the merits before Mr. Justice Stuart, who, on July 2nd, 1867, gave judgment for the appellants, declaring them pledgees of the goods in question, and granting *mainlevée* of the seizure thereof.

The respondent having inscribed the cause for review before three judges, the cause was again argued before Meredith, C.J., Stuart, J., and Tascheran, J., and on the 5th of February, 1868, the Court gave judgment, reversing the judgment of the preceding 2nd of July, on the ground that the appellants did not obtain possession of the goods so as to give effect to the contract of pledge, and dismissing the opposition of the appellants with costs; Mr. Justice Stuart dissenting.

From this judgment the appellants appealed to the Court of Queen's Bench of the Province of Quebec, Canada, and on the 19th September, 1868, that Court gave judgment confirming the judgment of the superior Court.

From this judgment the present appeal was brought.

*Sir R. Palmer* and *Bompas* for the appellants. The execution creditor stands in the shoes of the execution debtor. The question then is: What were the rights of Messrs. Maxwell & Stevenson at the time of the seizure by the sheriff? The chief officer at the examining warehouse had authority to accept the order of Messrs. Maxwell & Stevenson that the goods should be held subject to the appellants' order. The possession of the chief officer was, from the time that he accepted the said order, the possession of the appellants, notwithstanding the lien of the shipowner for freight; and, if not, it became such as soon as the freight was paid. At the time of the seizure, Messrs. Maxwell & Stevenson had no legal right, or actual power, to take possession of, or interfere with, or sell, the goods, without first paying to the appellants the sum due to them. The goods had been validly pledged to the appellants, and were in their constructive possession at the date of the seizure. Goods

in the possession of a pledgee cannot be taken in execution by a judgment-creditor of the pledgor. The respondent failed to prove that Messrs. Maxwell & Stevenson were, at the time of the appellants' advance, insolvent to the knowledge of the appellants. They referred to *Eyre v. McDowell* (1); *Watts v. Porter* (2); *Beavan v. Lord Oxford* (3).

No appearance was entered on behalf of the respondent.

*Cur. adv. vult.*

SIR JOSEPH NAPIER (on Feb. 11) delivered the judgment of their lordships.—In this case the respondent claims the benefit of a seizure of goods, under a writ of *fiat facias* issued on a judgment recovered by him against Messrs. Maxwell & Stevenson, of Quebec, merchants. The writ was issued on the 30th May, 1865, and certain goods, alleged to be the property of Messrs. Maxwell and Stevenson, were seized under the writ by the sheriff. The appellants opposed the execution on the ground that by a contract in writing, bearing date the 19th August, 1864, the property of Maxwell & Stevenson in the goods in question was conveyed to them, and an authority to sell expressly conferred by Maxwell & Stevenson for the purpose of securing repayment of advances made by the appellants on the faith of this contract; and as repayment had not been made, that the seizure under the writ should be set aside.

The cause was heard in the first instance by Mr. Justice Stuart, one of the judges of the Superior Court of Lower Canada. He allowed the opposition, and, after declaring that the opponents were pledgees of the goods in question, he granted *mainlevée* of the seizure thereof, that is, directed an *amoveas manus* against the execution creditor. This decision was reviewed by the full Court. The majority of the judges held that the contract had not been perfected by delivery of possession of the goods so as to constitute a pledge; and on this ground they reversed

(1) 9 H.L. Cases, 619.

(2) 3 E. & B. 743; s.c. 23 Law J. Rep. (N.S.) Q.B. 345.

(3) 6 De Gex, M. & G. 507; s.c. 24 Law J. Rep. (N.S.) Chanc. 311.

the decision of Mr. Justice Stuart, and dismissed the opposition to execution.

The case was then taken by appeal to the Court of Queen's Bench, and the judgment of the Superior Court was affirmed. The appeal to Her Majesty in council now under consideration has been brought against the judgment of the Court of Queen's Bench.

In the reasons of the judges, which have been elaborately drawn up by Mr. Justice Badgley, the material point of contention is stated to be, "the opposants' want of possession of the pledge, actually or constructively," on or after the 19th August, 1864. It is at the same time stated that "the preferential privilege of the pledgee in the thing pledged, according to our law, is undeniable, over the creditors of the pledgor when the contract is complete and perfect." It is suggested (but for the first time) that supposing the contract of pledge to have been completed, the course adopted by the appellants in opposing the execution was not in accordance with the Canadian law.

The goods in question were shipped at Liverpool, on board a steamer called the *St. David*. They arrived at Quebec early in August, 1864, and were reported by the master of the vessel at the customs in Quebec as consigned to Messrs. Maxwell & Stevenson.

According to the regulation of the Customs the goods were taken to their examining warehouse, and in the book of M. Metivier, the chief officer in charge of the warehouse, an entry was made of them as consigned to Maxwell & Stevenson. They were marked "M. & S." The lien on them for freight continued, and they were also liable to detention until the charges for customs' duties and storage had been satisfied. Subject to these conditions, the consignees had the ownership and the possession of the goods and also the right of dealing with them according to the rules of law applicable to transfers of goods that are subject to charges, and actual delivery does not take place at the time of the transfer.

The officer in charge of the warehouse was bound not to part with the goods until the several claims for freight, duties, and

storage had been discharged. But he was at liberty, with the sanction of the consignees, to substitute in his warehouse-book the name of another as entitled to their property and possession subject to the conditions then subsisting.

"The general rule of my office" (says M. Metivier) "is, when a party applies to transfer the goods to another party, I generally make a remark in my book to keep in mind of asking a proper order from the party to whom the goods are transferred, and that is very often."

The goods having thus been placed in the Customs Examining Warehouse, and the entry having been made in the book of M. Metivier, Maxwell & Stevenson, on the 19th of August, 1864, asked for and obtained from the appellants an advance of 1,800 dollars on the goods, described in the receipt for the "advance, signed by Maxwell & Stevenson, as wire-rope, rigging, &c., marked M. & S., ex steamer *St. David*, and now in Her Majesty's Examining Warehouse; said advance to be repaid to D. D. Young & Co. on or before the maturity of their note, together with a commission of 5 per cent. on amount advanced. Should the advance not be repaid at that time, D. D. Young & Co. to have the right of selling the rigging, &c., and paying themselves out of proceeds."

A request note of the same date, directed to the officer in charge of Her Majesty's Examining Warehouse, and signed by Maxwell & Stevenson, was given by them to the appellants, whereby the officer was requested "to hold the goods" (described as in the receipt) "subject to the order of D. D. Young & Co., they paying the duty and storage charge before removal." On the same day this was sent to M. Metivier, who wrote across it—"Accepted, F. X. Metivier," and it was then returned to and kept by the appellants. M. Metivier also wrote an entry in his own book opposite to the entry made when the goods were first placed in the warehouse. This second entry was—"Subject to D. D. Young's order." He says—"I made that entry in order that, in case the said wire- and rope-rigging were claimed by anybody, I should require the order of D. D. Young & Co. before delivery." He further says that he would not have delivered the goods to

Maxwell & Stevenson, or to any other, without an order from the appellants.

Thus, as between the Customs and the appellants, the latter stood precisely in the position in which Maxwell & Stevenson had stood before the request note was accepted and the entry made in the warehouse-book by M. Metivier; and as between the appellants and Maxwell & Stevenson, the goods in question were sufficiently transferred for the purposes of the pledge or mortgage.

It appears to their Lordships that by the express agreement of the parties in this case, followed by the acceptance of the chief warehouse-keeper, there was a valid constructive delivery of the property comprised in the contract, and that the judgment under appeal, which dismissed the opposition and gave effect to the seizure under the execution, to the prejudice of the rights of the appellants as pledgees, cannot be supported.

Their Lordships will, therefore, humbly advise her Majesty that the judgment of the Court of Queen's Bench should be reversed, and that in lieu thereof it should be ordered that the judgment of the Superior Court, which reversed the judgment of Mr. Justice Stuart, should also be reversed, and the judgment of Mr. Justice Stuart be affirmed with costs in both Courts. The appellants are entitled to have their costs of this appeal.

Attorneys—Bischoff, Bompas & Bischoff.

1870. { THOMAS PHILIPPE LA CLOCHE  
Jan. 22, 24. { AND ANOTHER, *appellants* ;  
March 5. { THOMAS LA CLOCHE,  
                  *respondent*.\*

*Jersey—Heir—Testamentary Law—Personal Estate—Rights of Possession of Executors.*

*By the law and custom of Jersey a testator who dies leaving lawful issue can only dispose of a part of his personal estate, but the executors of such testator are entitled to*

\* Present, Lord Westbury, Sir J. Colville and Sir J. Napier.

NEW SERIES, 39.—PRIV. COUN.

*possession of the entirety of the personal estate until they have fulfilled the duties of the administration.*

This was an appeal from a judgment of the full Court of Appeal of the Royal Court of Jersey, reversing the judgment of the inferior number of the Royal Court.

The appellants were the executors of Thomas La Cloche.

The respondent was the heir of the said Thomas La Cloche.

The said Thomas La Cloche, who was a native of St. Helier in the island of Jersey, made and executed his last will and testament, bearing date the 2nd day of October, 1862; by which will, after providing for all debts and some small legacies and funeral expenses, the testator bequeathed all his personal property to his grandson, Thomas Philippe La Cloche, and in case the said Thomas Philippe La Cloche should die in the life time of the testator, the testator directed that the whole of the residue of his personal estate should pass to his son, John Frederick La Cloche, and he appointed the said Thomas Philippe La Cloche and William Gaudin, the appellants, the executors of his will.

The testator died on the 13th day of October, 1864, without having altered or revoked his said will, which was proved on the 20th day of October, 1864, by the said Thomas Philippe La Cloche and William Gaudin, the executors therein named, and who were the present appellants, before the Dean of the Ecclesiastical Court of the island of Jersey.

The personal property of the testator was of considerable value, and the principal part thereof was, at the date of his decease, invested in foreign funds and railway shares, chiefly French, Spanish, and Italian, the securities for which, amounting in the whole to several hundred thousand francs, were at the time of his death held by Messrs. Mallet Brothers and Company, bankers, of Paris, who also had a considerable sum of cash belonging to the said testator's estate.

The appellants after having proved the will of the testator took measures as the executors, for the purpose of obtaining the transfer to them of the various funds and securities so invested belonging to the

E

testator's estate, but upon applying to Messrs. Mallet Brothers and Company, they were informed that a caveat had been lodged in their hands on behalf of the respondent, Thomas La Cloche, who claimed to be the only son and the heir of the said testator.

On the 24th November, 1864, the appellants caused notice to be served upon Messrs. Mallet, summoning them to appear before the First Chamber of the Civil Tribunal of the Seine to show cause why they should not be ordered without delay to restore to the appellants, as such executors, with the interest due thereon for the half year then past, all the several securities and funds, and all such personal effects as had been deposited in their hands by the testator and which belonged to his succession.

The respondent appeared in the said suit, alleging that in his capacity as only son and sole heir of the deceased he had instituted before the competent tribunals an action for declaring null and void the said will, that in that position, he had an interest in seeing that the securities belonging to the succession of his father should not be placed in the hands of the executors.

On the 24th of February, 1865, the First Chamber of the Civil Tribunal decided that the present appellants had the right to receive all the moneys and personal securities, forming part of the succession of the said testator, which were in the hands of Mallet Brothers and Company, and that the said Mallet Brothers and Company were bound, notwithstanding any opposition of the respondent, to hand the same over to them, and adjudged that the respondent should pay the costs of his intervention.

The respondent appealed from this decision, and on the 29th of November, 1865, the Imperial Court of Paris reversed the decision of the Court below, on the ground that the dispute between the heir and the executors of the will related to a foreign succession, and only concerned foreigners, and that the French Courts were therefore incompetent to adjudicate thereon, and the said Court ordered that until it should be otherwise decreed the said Messrs. Mallet, Brothers should continue to remain in possession of the securities, documents,

papers and moneys belonging to the succession of the said testator, Thomas La Cloche, then in their hands, and to administer them for the benefit of the persons entitled.

On the 27th of April, 1865, and after the decision of the Civil Tribunal of the Seine, but before the hearing of the appeal from that decision, the respondent, alleging himself to be the only son of the testator and sole heir to the succession of the deceased, instituted a suit in the Royal Court of Jersey against the appellants as executors of the said will, for the purpose of having the said will set aside and annulled as being made to the prejudice of the said heir and contrary to law and custom.

The suit so instituted by the respondent against the appellants came on for hearing before the inferior number of the Royal Court, and on the 20th of June, 1865, the inferior number of the Royal Court of Jersey declared that the respondent had made out his title to be considered legitimate heir of the testator, and determined that the said will ought to be reduced, *ad legitimum modum*, thereby in effect deciding that the testator had by his said will exceeded the amount of which he could by law dispose beneficially, but that the will ought not to be set aside or annulled, and the Court sent the parties before the Greffier as arbitrator, to proceed and act in conformity with the judgment of the Court.

Proceedings were taken before the Greffier, when the appellants objected that they ought, according to custom, during a year and a day at all events, to be seised of all the personal property (*meubles*), constituting the succession, and not having been so seized according to custom, they could not be held bound to render, as they were required to do, accounts of the said testator's estate, and that the conduct of the respondent in intervening in the said action before the French tribunals, and thereby resisting their title to receive and administer the said testator's personal property, in fact operated to take from them both the liability and the power to render such accounts. These objections of the appellants, however, were then overruled.

The appellants also commenced an action in the Royal Court of Jersey.

The plaint in this action alleged that the appellants were the executors of Thomas La Cloche deceased, and that, in consequence and by force of the law and custom of Jersey they became of right invested with the entirety of the rights of the succession of the said Thomas La Cloche, and had, in consequence, the absolute seisin from the moment of the death of the testator of all the effects, debts, and personal property of the deceased.

The respondent pleaded, amongst other pleas, that he was the only son and heir of the said Thomas La Cloche, that as such he was entitled by law to the possession and property of two-thirds at the least of the personal estate of the deceased, of which right it was impossible for the deceased to deprive him; that by the rule of law, "la mort saisit le vif," he was in his character of heir, from the moment of the death of the testator, seized of the entirety of the personal estate, and was not bound to divest himself of any part thereof, before it should have been definitely determined whether or not there existed a valid will of the deceased; that the question of setting aside the will of the deceased was then pending before the Court, in a cause to which he the said defendant in his character of heir of the deceased, and the residuary legatees, were parties; and that although the Court had decided that the will of the deceased ought not to be set aside in its entirety, but ought only to be reduced, *ad legitimum modum* the question as to the validity of the will had not been set at rest, the plaintiffs having appealed from the said decision; that even supposing that the judgment of the Court should be confirmed on appeal, it would be evidently contrary to principle and to law, that he the heir should be bound to divest himself of the part which belonged to him of right, in order to transfer it to persons who had no right, except such as they derived from the testator, in the degree in which he had power to make a will. And the respondent alleged that the question as to the seisin to the estate of the deceased could not be decided until the result should be known of the suit to set aside

the will, that he ought to remain seized of the entirety of the said estate until the termination of that suit; and that, upon the supposition most favourable to the executors, they could only be entitled to one-third, at most, of the said estate.

The appellants answered that the seisin conferred upon the executors, in consequence of the trust committed to them, had its origin and its reason in the will formally expressed by the testator, that this seisin had a character essentially administrative, and displaced the common law seisin of the heir, which only became effective when the mission of the executors was accomplished; that the maxim, "la mort saisit le vif," only conferred the direct and immediate seisin on the heir, in a case in which there was no will, and therefore, that in the present case it was not applicable. That it was from the very hands of the testamentary executors that the heir was to receive his net share of the succession—the testamentary executors being the direct continuation (*continuateurs*) of the very person of the testator, as far as regarded the carrying out of his last wishes.

On the 13th of October, 1866, the inferior number of the Royal Court of Jersey unanimously gave judgment in this action in favour of the appellants, as follows:—"Considering that, according to the custom followed in this bailiwick, the testamentary executors are seized of the personal property of the testator. That the seisin of the executors is not permitted for their own profit, but in trust to serve in the execution of the will. That the seisin of the executors is indivisible by the very nature of their duties as such, and that they ought to have the seisin of the entirety of the personal estate of the deceased, all the more because from the moment of taking upon themselves the trust, they are bound to prepare an inventory of the entirety of the said succession, and are liable to the demands of those who have claims against the said estate. The Court, for these reasons, has overruled the pleas of the defendant, and is of opinion that the plaintiffs, as executors of the will of the said late Thomas La Cloche, are entitled to the seisin of the entirety of the personal estate of the said deceased, and

that they are to be preferred to the heir in the possession of the effects, deeds, and securities of the said succession, and the defendant is condemned to pay the costs."

The respondent appealed on all the points from the judgment of the inferior number of the Royal Court to the full Court.

On the 27th of October, 1868, the full Court gave judgment upon the appeal, the Judges being divided in opinion. Three of the jurats were of opinion that the judgment of the Court below ought to be affirmed for the same reasons. Two jurats were of opinion that the testator having died in the island, where the law is superior to his will, the law allowing the testator to bequeath only one-third of his personal property, the principle "*le mort saisit le vif*" gave to the heir the seisin of the remaining third of the personal estate of the deceased, each party contributing to the charges or debts of the estate in the above mentioned proportions. One jurat was of opinion that considering that by the act of the Court of the 20th day of June, 1865, the will of the said Thomas La Cloche, Esquire, was upon an action between the parties to this case reduced *ad legitimum modum* and the said parties were sent before the Greffier as Arbitrator in order to establish the amount of the estate of the deceased, and to proceed in conformity with the judgment of the Court, that by that judgment, the right of the said Thomas La Cloche in his capacity as sole heir of his father to the two-thirds of the said personal estate was in conformity with the acknowledged laws and customs of the island, and that the said Thomas Philippe La Cloche, one of the executors of the said will and residuary legatee, had a right to the other third, subject to the charges fixed by law. That it had been established by the proceedings taken before the Greffier, that nearly the whole of the personal estate appertaining to the said succession, consisting of securities payable to bearer, amounting to nearly one million of francs, was in the hands or in the custody of Messrs. Mallet Brothers, bankers, at Paris, where the deceased had placed them. That an heir in a direct line cannot be deprived of his right to take possession

of the share coming to him in a personal succession. That the right of the heir to two-thirds of the said estate having been acknowledged by the above-mentioned judgment, that the said Thomas La Cloche as heir of his father should, under all the circumstances of the case, be invested with the share to which he was entitled before the executors could take possession of the third of the said estate, which the deceased had right to dispose of. One jurat was of the following opinion:—That if the two executors were strangers, and had no interest in the will as legatees, they would have a right to the seisin of the whole of the personal estate of the testator, but considering that Thomas Philippe La Cloche, one of the executors, was residuary legatee, it would not be right towards the heir, to invest the executors with the whole of the personal estate, but that the executors should have the seisin of the portion that the testator had by law the right of bequeathing; for these reasons he was of opinion that the judgment of the inferior number should be reversed until the final adjudication of the suit entered for the revocation of the said will. One jurat was of opinion that the judgment of the inferior number ought to be reversed, inasmuch as, according to the laws and customs of the island, a father cannot dispose of the whole of his personal estate, but only of one-third in conformity with the wish of the law. And whereas, by an act dated the 20th day of June, 1865, the will of the deceased, wherein he disposed of the whole of his personal estate, without any reference to his heir, was modified, the said will being reduced *ad legitimum modum*, that is to say, in accordance with law, and the parties were sent before the Greffier, in order to establish the share appertaining to each party. That the executors had no right to claim the seisin of the whole of the personal estate of the deceased, that they should only take after shares had been apportioned, the portion which might come under their administration, and disposal of it according to the will of the testator. That for these reasons the pleas of the executors should be dismissed, and the heir should have the seisin of the two-thirds, and the executors the seisin in pos-



session, of the other third of the personal estate belonging to the said deceased, the latter being bound, should it be asked, to give security for the administration of the share of the said personal property under their control.

The Court, therefore, reversed the judgment of the Court below, and condemned the appellants to pay the costs of the action, with the exception of the costs of the rehearing, which costs were to be shared equally between the parties.

From this judgment, the appellants appealed to Her Majesty in council.

*Sir R. Palmer, Mr. Millar and Mr. Vickery* (Jersey bar), for the appellants.

By the law and custom of the island of Jersey, every person of the age of twenty years, not labouring under incapacity, has power to make a will, and may nominate persons as executors to whom he may commit the trust and duty of administering his property. By the law and custom of Jersey, an executor who has in due form proved a will, is liable to the payment of all debts of the testator, and is entitled, enabled, and bound to collect and get in and recover all the personal estate of the testator. Assuming that the respondent is the legitimate son and heir of the testator, and entitled to share in the division of his estate, yet the right of the testator to make a will and to appoint executors is not thereby prejudiced or affected. Principle, convenience, and authority are in favour of this practice. The executors are the proper persons to receive and give receipts for the entirety of the property of the testator, and to administer and apply the same according to law, and to transfer or pay over to the heir of a testator so much of the testator's estate as he shall be unable to dispose of. The maxim "*le mort saisit le vif*," on which the respondent relies, applies only when a person dies intestate, and when thereupon his property passes direct to the heir. At the time when the Norman law prevailed in England, the whole personal estate of a testator devolved upon the executors, though a testator's wife and children could not be deprived of the whole of the personalty.

They referred to *Terrien* (1), *Pothier* (2), *Spence Equi. Juris.* (3), and *W. Williams on Executors*, citing *Glanville 2 Fleta*.

*Mr. Mellish* and the Procureur General of Jersey (*M. Marett*), for the respondent.

The right of a testator to vest his personal estate in his executors is dependant on and is limited by the power given him by law of disposing of his estate. The testator has left an only son, and has consequently by law power to dispose of one-third only of his personal estate. The executors of the will have no legal right to the seisin of the whole of such estate, but at most to the seisin of the "*part disponible*," which is one-third part. The fact that the testator has made a will disposing of the whole of his personal property, cannot add to the powers of the executors, or operate to the prejudice of the heir. An act done in violation of the law can have no effect. The respondent is the sole heir of the testator, and is entitled to two-thirds of his personal estate as his lawful right, irrespective of the wishes of the testator and free in all respects from his control. By virtue of the maxim "*le mort saisit le vif*" he became seized of the succession of the deceased at the very moment and by the very fact of the death of the testator. He cannot be compelled against his will to suffer the executors to have the possession and control of the portion of the estate of the deceased which by law devolves on the heir. By the law of Jersey the executors of a will cannot be called upon to give an account of their administration until after the expiration of a year and a day from the date of the probate of the will. During all that time, the heir would be excluded from the enjoyment of what is his own. A testator must be considered as having died intestate as to that part of his personal estate over which the law gives him no testamentary power.

*Sir R. Palmer* in reply.

*Cour. adv. vult.*

(1) *Des Testaments : Des Exécuteurs*, Commentaires de Droit Civil de Normandie, bk. 6. c. 7. p. 217. Coutume d'Orléans. Coutume Réformée.

(2) *Traité de Droit Civil*. Dupin's Ed. vol. vii. p. 343; vol. x. p. 641.

(3) Vol. i. p. 189.

LORD WESTBURY (on March 5th) delivered the judgment of their Lordships.

The appellants are the executors of the will of Dr. Thomas la Cloche, who, at the time of his death, was domiciled in the island of Jersey.

The respondent claims to be the lawful son and only child of the testator.

The construction and effect of the testator's will, and the succession to his moveable estate, must be determined by the law of Jersey, being the law of the domicile.

By that law a testator who dies leaving a widow and a lawful child, cannot dispose by his last will of more than one-third part of his personal estate, and if the will professes to dispose of the entirety or more than one-third part of the moveables, it is liable to be reduced *ad legitimum modum*.

The testator died on the 13th of October, 1864. His will was duly registered, that is to say proved by the appellants as executors on the 20th of October, 1864.

The personal estate of the testator consisted chiefly of shares in foreign funds and railway companies, the certificates and coupons of which were at the time of his death, and still are, in the hands of his bankers, MM. Mallet, Freres & Co., bankers at Paris.

The appellants demanded from MM. Mallet the delivery of those securities to themselves as executors. The respondent as heir-at-law intervened and entered a caveat against such delivery.

The Imperial Court of Paris, on appeal, decided that as the dispute related to a foreign succession, and concerned foreigners only, it was itself incompetent, and that the property must remain in the hands of the bankers until the right of possession had been decided by the tribunals of the domicile.

Pending these proceedings in France, a suit was instituted in Jersey by the respondent against the appellants for the purpose of annulling the will, and the appellants in their defence impeached the legitimacy of the respondent. In these suits it seems that the Court in Jersey of the first instance refused to set aside the will, but made a decree reducing it *ad legitimum modum*, and also declared that the respondent had made out his title as lawful heir

to the testator. From these judgments both parties appealed, but at this stage of the proceedings it seems to have occurred to them that the property could never be obtained from the bankers at Paris until the right to the saisine or possession of the moveable estate had been finally determined, and a final decision given on the question whether the executors were entitled to take possession of or recover the whole of the moveables for the purposes of administration, or whether the heir was entitled to take possession of two-thirds directly, excluding any possession thereof by the executors.

Accordingly, the executors commenced an action in the Royal Court of Jersey, and by their plaint prayed a declaration that they as executors have by virtue of the oath that had been administered to them, and by virtue of the law and customs of the country, the saisine or possession of the entirety of the moveable succession of the deceased testator.

In answer to this action the present respondent pleaded that as sole heir-at-law and only child of the deceased testator, he had right by law to the possession and ownership of two-thirds at least of the moveable succession of the deceased, and that by the rule of law, *le mort saisit le vif*, he was seized thereof from the moment of the death of the testator.

The judgment of the inferior number of the Royal Court of Jersey was given to this effect, viz.: "Considering that, according to the custom constantly followed in this bailiwick, the testamentary executors are seized of the moveable property of the testator, that the seisin of the executors is not granted them for their own personal benefit, but rather in trust to serve the administration of the will; that the seisin of executors is by the very nature of their duties indivisible, and that they ought to have possession of the entirety of the moveable property of the deceased, the more because, from the time of their entry into charge of it, they are bound to furnish an inventory of the entirety of the succession, and are bound to answer the demands of all who have any claims against the succession. Therefore the Court dismisses the plea of the defender, and determines that the plaintiffs as executors of

the will of the deceased are entitled to the seisin of the entirety of the moveable succession of the deceased, and ought to be preferred to the heir in the possession of the moveables, documents, and evidences of the succession."

From this judgment the present respondent appealed to the superior number of the Royal Court.

Before stating the decree of the Appellate Tribunal it is material to observe that the judgment of the inferior number included the decision of the Bailly, who is the principal legal authority in Jersey.

Their Lordships think, therefore, that great weight is to be ascribed to the Bailly's statement of the law and custom of the island. The Court of Appeal, or Court of the greater number, were greatly divided in opinion; three of the jurats or judges were in favour of affirming the decision of the Court below. Two of the jurats were of opinion with the respondent that the maxim *le mort saisit le vif* gave to the heir the saisine or possession of two-third parts, and to the executors the seisin of one-third part only, of the moveable succession of the testator.

Another jurat appears to have decided against the right of the executors, because in this particular case one of them was residuary legatee.

The two remaining jurats appear to have also decided against the executors, on the ground that the will had been reduced *ad legitimum modum*, and the parties sent before the Greffier to prove the portions which belonged to each party; and that this had deprived the executors of the right of claiming seisin of the whole of the moveable property. Upon the whole, a majority of five jurats out of eight pronounced for the reversal of the decision of the Court of inferior number. Their Lordships have stated shortly the grounds of the judgments, because they wish it to be observed that the statement of the law or custom of Jersey, contained in the judgment of the Court of inferior number, is not in terms denied or qualified by the majority of the judges of the Court of Appeal.

In determining the abstract question raised by this appeal, their Lordships have felt anxious to form their decision entirely

upon the proper evidence of the law and custom of Jersey, without being influenced by considerations of convenience, or by analogies derived from the laws or customs of other countries.

Their Lordships have, however, much difficulty in ascertaining what are the recognised authorities on the law of Jersey.

The book called *Le Grand Costumier de Normandie*, which is probably the earliest admitted authority, does not appear to contain anything on the subject of testamentary executors or succession of moveables, and was not cited or referred to in the argument. The commentary of M. Terrien on the civil law, as well public as private, observed in the country and Duchy of Normandy, was cited by the counsel both for the appellants and respondent, and the Attorney-General for the Island of Jersey seemed to admit it to be a book of authority in the Courts of Jersey. These commentaries were published at Paris in the year 1574, a considerable time after the final separation of the Duchy of Normandy from the Crown of England, but apparently several years before the formation of *La Coutume Réformée* of the Duchy, which appears to have been prepared under the authority of letters patent granted by Henry III. of France, and dated the 14th of October, 1585.

The commentary of Terrien, therefore, may be reasonably regarded as the best evidence of the old custom of Normandy, and also of the Channel Islands before the separation of Normandy from the English Crown. In this commentary, in the 7th chapter of the sixth book, which is entitled *Des Testaments*, after stating the law, that if a testator be married and have a child *in potestate patris*, he cannot make a will of more than one-third of his moveable property, under the heading *Des Exécuteurs*, is the following passage:—

"Fant supplier icy ce qui est omis à dire de l'office & pouvoir des exécuteurs: C'est qu'ils sont saisis dedans l'an & iour du trespas du testateurs, des biens meubles demourez par son decez, iusques à la valeur & accomplissement du testament, & preferez aux héritiers en la possession desdits biens meubles: comme le portent aucune costumes de ce Royaume. Et peuvent dedans ledit an prendre & intenter proces

pour raison de la dite exécution, & estre conuenus come exécuteurs, des choses contenues au testament. Et aussi peuent & doyent faire deliurance des laiz aux legataires, quand ils ont accepté la charge de l'exécution. Acceptans laquelle & eux entremettans au faict d'icelle sans benefice d'inuentoire, sont obligez aux dettes, laiz testamentaires, & funerailles du défunct. Et sont appelez detteurs d'auanture par nostre costume, . . . Et sont tenus à rendre conte de leur exécution aux héritiers & en payer le reliqua."

We construe this passage as importing that the executors are entitled to the possession of the whole of the moveable property of the testator for a year and a day after the decease, and that their possession will continue until they have received the amount of the moveable estate bequeathed by the will, and have also fulfilled the duties of administration.

In the "Coutume Réformée," according to the commentary of Godefroi, which was published in 1626, and the commentary of Basnage, which was published in 1694, the passage which we have cited from Terrien's Commentary appears to form the text of the 430th article of the Coutume itself, in the Chapter "Des Testaments," and which is thus expressed:—

"Les exécuteurs testamentaires sont saisis durant l'an et iour du trespas du defunct des biens meubles demeurez apres le décès pour l'accomplissement du testament iusques à la concurrence des laiz et autres charges, en faisant au préalable inventaire appelez les heritiers et en leur absence les plus prochains parens: si mieux l'héritier ne veut saisir l'exécuteur testamentaire des laiz et charges en argent ou en essence."

These words are nearly identical with those of Terrien, except that for the words "jusques à la valeur," are substituted the words "jusques à la concurrence des laiz et autres charges," which are explanatory of the words "jusques à la valeur." The law and course of procedure are plainly indicated by this article. Immediately on the death of a testator, the executors are to take possession of the whole of his personal estate, and to continue in such possession until they have collected or received sufficient property to answer the bequests

validly made by the will, the testator's debts and all the expenses of administration; but at the beginning of their office the executors are bound to make an inventory of the whole of the moveables, and to cite the heirs for the purpose of seeing this done, unless the heir elect to pay or secure to the executor the full amount of the bequests, debts and expenses, in which case it would seem that the heir becomes entitled to the possession.

The "Coutume d'Orléans" and the "Coutume de Paris" (although they differed in this, that the "Coutume d'Orléans" included heritable property, and did not confine the rule to moveables), appear to have contained the same law or custom with respect to the "saisine" of executors as that stated in the passage cited from Terrien, and embodied in the article of the "Coutume Réformée" as cited from Godefroi and Basnage. These "coutumes" may be legitimately referred to for the purpose of testing the interpretation we have put on the custom as stated by Terrien, and also for the purpose of explaining the force and effect of particular expressions. Pothier, in his treatise on the "Coutumes des Duché, Bailliage, et Prévoté d'Orléans," under the 16th title, "Des Testaments," Article 290 (10th Vol. of Dupin's Ed. 621), after referring to the 163rd Article of the "Ancienne Coutume" and to the 297th Article of the "Coutume de Paris," states the "Coutume d'Orléans" in the following words, which are nearly identical with the passage in Terrien:

"Les exécuteurs des testamens sont saisis des biens meubles et héritages du testateur jusques à la valeur et accomplissement du testament."

At the word "saisis" is the following note:—

"C'est-à-dire, qu'ils peuvent d'eux-mêmes se mettre en possession des biens du testateur, en faisant faire un inventaire desdits biens, et sans qu'ils soient tenus d'en demander aucune délivrance à l'héritier; ce qui n'empêche pas que l'héritier ne demeure vrai possesseur de tous les biens de la succession, dont il a été saisi par le défunt dès l'instant de sa mort, suivant l'article 301: car ces exécuteurs ne sont en possession que comme procureurs

légaux de l'héritier, pour exécuter à sa décharge les dispositions testamentaires; de manière que l'héritier est censé continuer de posséder par eux."

And again, in his "Traité du Droit français," under the head "Traité des Testaments," 2nd Article entitled "De la Saisine des Exécuteurs testamentaires" (7th Vol. of Dupin's Ed. 348), is this explanatory passage:—

"Le pouvoir des exécuteurs testamentaires consiste principalement dans la saisine, que les Coutumes accordent à l'exécuteur testamentaire, pour l'accomplissement du testament. Cette saisine est compatible avec celle de l'héritier; car cette saisine, qui est accordée à l'exécuteur, n'est pas une vraie possession; l'exécuteur, par cette saisine, est constitué séquestre; il n'est en possession qu'au nom de l'héritier; c'est l'héritier qui est le vrai possesseur de tous les biens de la succession, suivant la règle, *la mort saisit le vif*; c'est la doctrine de Dumoulin, qui, sur l'art. 95 de Paris, dit: *Hæc consuetudo non facit quin hæres sit saisitus ut dominus, sed operatur quod executor potest ipse manum ponere et apprehendere . . . et etiam executor non est verus possessor, et nisi ut procurator tantum.*"

These passages appear to their Lordships to be very applicable to the case before them, and to reconcile the arguments of the appellants and respondent. It is true, according to this interpretation, that under the maxim *la mort saisit le vif*, the children of a testator are from the moment of the death the true owners of that part of the moveable estate which belongs to them, but it is equally true that the law makes the executors *les procureurs légataires* of the heir, which procurator is irrevocable until *l'accomplissement du testament*, and in this character the law gives the executors full right and title, *d'eux-mêmes*, that is, in their own names, to take possession of, and recover and receive the whole of the moveables for the purposes of administration. In the same article, Pothier remarks: "Observez, que l'accomplissement du testament comprend non-seulement l'acquittement des legs, mais aussi celui des dettes mobilières de la succession; car l'acquittement de ces dettes fait partie de l'exécution testamen-

taire." In the argument before us it was admitted by the respondent's counsel that it was the right and duty of the executors to pay the debts of their testator, and that they were liable accordingly to the creditors, but if an obligation thus indefinite be thrown upon them it seems to follow of necessity, first, that the right to possess and retain the whole of the personal estate must remain with them "jusqu'à l'accomplissement du testament;" secondly, that the portion that belongs to the heir cannot be ascertained until the amount of this indefinite prior charge has been discovered and liquidated. This, however, must be subject to the right of the heir to interpose and demand possession from the executors by depositing with them the full amount of the debts and other charges of administration, and of the bequests made by the will, if at least there be such a custom in the Island of Jersey, as there seems to be in the Coutume réformée of Normandy, and in the Coutumes of Orléans and Paris.

The cases which have been collected and given in evidence by the appellants, although obscure, and as to some of them of little application, yet so far as they go distinctly confirm the conclusion which has been stated.

Thus, in No. 12, the Court directs the executor to deliver over a third of the net residue, i.e., of the clear residue, to the legatees; and in the case cited, No. 14, the judgment of the Court is thus prefaced:—

"Considering that the execution of a will cannot be regarded as ended until the executor has recovered all that may be due to the succession of the testator, and out of it has paid his debts,—and more particularly in the case No. 16, which was decided on the 24th March, 1860, the Court in the record of its judgment lays down the following principles:—

1. That a testamentary executor is seized in full right of the moveables of a succession, for a year and a day from the date of the death of the testator.

2. That these moveables during the year and the day are in the custody and under the personal responsibility of the executor.

3. That after possession for a year and a day the executor must carry the will

F

into effect, and deliver good and faithful accounts to the person entitled.

No case or other authority has been cited by the respondent in support of the judgment appealed from.

By way of confirmation of the conclusion which their Lordships are disposed to draw from the authorities they have cited, may be added the illustrative fact, that shortly after the Norman invasion of this country the present law or custom of Jersey appears to have prevailed in England, and was most probably, therefore, brought in by William the Conqueror. It is stated by Glanville to have been the common law of the land in the reign of Henry II. with respect to moveable successions; and accordingly the wife and the children were entitled to recover from the executors their proportionate parts of the personalty of the testator, and the writ entitled *De rationabili parte* was framed for their relief, which plainly shews that the executors were regarded as entitled, in the first instance, to the seisin or possession of the whole of the personal estate. Without dwelling, therefore, on the great inconvenience that would result from such a rule as is contended for by the respondent, their Lordships are clearly of opinion that the judgment appealed from is erroneous, and contrary to the established law and custom of Jersey, and they will therefore humbly advise Her Majesty to reverse the judgment appealed from, to affirm the judgment of the Court of the inferior number, and to direct the respondent to pay to the appellants their costs of the proceedings in the Court of the superior number, and also their costs of this appeal.

---

Attorneys—Jones, Blaxland & Son, for appellants;  
Hancock, Saunders & Hawksford, for respondent.

---

1870. } THOMAS NYE (appellant) v. JAMES  
July 19. } MACDONALD (respondent).\*

*Lower Canada—Notary Public—Certificate of—Deed—Execution—Evidence.*

*In a petitory action in Lower Canada, the plaintiff produced a deed of sale executed before a notary public in Upper Canada, and a certificate by such notary of the due execution of the deed. No further evidence of execution was produced. —Held, that the certificate of a notary public of the due execution of a deed in a colony regulated by English law does not dispense with proper evidence of execution, though the certificate is put in evidence in a colony regulated by French law, where such certificate is sufficient evidence.*

This was an appeal from the Court of Queen's Bench, province of Quebec, Lower Canada.

The action was brought in the Superior Court for Lower Canada by the appellant against the respondent, to recover possession of a piece of land, in the township of Godmanchester, in the district of Montreal.

The declaration alleged that by a deed of sale of the 11th November, 1841, executed at Montreal, before one Doucet and his colleague, public notaries, Alexander Lake, otherwise called James Lake, yeoman, and Mary his wife, both of the township of Loughborough, by their attorney, William Teeple, duly appointed in virtue of a power of attorney annexed to the deed, sold the said land to the appellant.

That the respondent had unjustly obtained possession of the half of the said land so sold, and refused to restore it, and had received the rents and profits to the value of 600*l*. The declaration then prayed that the appellant might be declared owner of the said half, and the respondent adjudged to deliver up the same, with the rents and profits, from the time of his unjust possession, and pay the appellant 600*l*. as damages.

The respondent pleaded, first, that neither the vendors of the appellant nor their auteurs ever had any title to the land, and that the respondent was in possession

---

\* Present, Lord Cairns, Sir J. Colvile, and Sir J. Napier.

as proprietor at the time of the alleged sale to the appellant; and the general issue.

The appellant answered the first plea by alleging title, as follows:—

That on the 4th of January, 1814, the land in question was by letters patent under the Great Seal, granted to John Rankin, in trust for himself and his brothers and sisters, James, David, Mary, and Elizabeth, his and their heirs and assigns for ever in free and common socage. That John, James, Mary, and Elizabeth died intestate, leaving David their only surviving heir and representative. That David by will devised the said land to Mary Lake, described as the wife of James Lake, of Loughborough, yeoman, and to her heirs and assigns. That David died in March or April, 1833, without having altered his will, and that the said will was duly proved at Kingston, on the 9th of October, 1833. That Mary Lake, in conjunction with her husband, Alexander Lake, otherwise called James Lake, at Kingston, on the 8th of October, 1841, executed a power of attorney to William Teeples, in the presence of witnesses, one of whom, Samuel Rorke, was a notary public, who then and there signed his certificate, attesting the due execution of the said power of attorney. That the deed of sale mentioned in the declaration was executed under this power of attorney. That the power of attorney, the certificate of Rorke, and a certificate of the Administrator of the Government of the Province that Rorke was a notary public, were deposited with the aforesaid Doucet, one of the notaries before whom the deed of sale was executed. That thus the title of David Rankin became vested in the appellant under the deed of sale.

The respondent replied generally to this answer.

At the trial the following documentary and oral evidence was adduced:—A copy of the letters patent of 1814; extracts from registers proving the deaths of John, Mary, James, and Elizabeth Rankin; the probate of the will of David Rankin, and the affidavit of one of the executors; the power of attorney from Alexander Lake and Mary Lake, his wife, to William Teeples to sell the land devised in the

will, executed by the two Lakes in the presence of two witnesses, one being a notary public. To this power of attorney was annexed the notarial certificate of the notary, and a certificate of the Administrator of the Government of the Province that the said notary was a notary public of Upper Canada.

On the 31st of October the Superior Court gave judgment, dismissing the action with costs, on the ground that the appellant had failed to establish by evidence the material allegations of his declaration, and more especially that William Teeples was the attorney of Mary, wife of James Lake, mentioned in the will of David Rankin, duly authorised to sell the said land and premises.

From this judgment the appellant appealed to the Court of Queen's Bench, and on the 6th December, 1864, that Court gave judgment, affirming the judgment of the Court below.

The present appeal was brought to reverse this judgment.

*Mr. Garth* and *Mr. Gibbs* for the appellant.—The judgment of the Superior Court of Lower Canada was contrary to law, and ought to have been reversed. The appellant produced evidence sufficient in law to support the material allegations of his declaration. The appellant established that William Teeples was the attorney of Mary, the wife of James Lake, mentioned in the will of David Rankin, duly authorised to sell the said land and premises. The execution of the power of attorney is admitted on the pleadings. But if this were not so, it is sufficiently proved. By the French law which prevails in Lower Canada, a notarial certificate is conclusive evidence of the due execution of the instrument executed before a notary public. Even if it would not have been sufficient evidence before the Courts in Upper Canada, where English law prevails, it must be sufficient in Lower Canada, which is ruled by French law. Evidence is governed by the *Lex Fori*. A notary has a well known commercial character. The certificate must operate according to the law of the country where it is produced in evidence. It is part of the business of a notary to make himself acquainted with the persons who resort to him in his

notarial capacity. They referred to *Ex parte Church* (1), *The Queen v. Scriveners' Company* (2), *Garvey v. Hibbert* (3), *Lord Kinnaird v. Lady Saltoun* (4), *Vanier v. Fallmer* (5), *Forbes v. Atkinson* (6), *Copps v. Copps* (7), *Lawrence v. Stuart* (8), Act of Low. Canada, 12 Viet. c. 88. s. 85, Pothier, Hypotheque, c. 1. s. 2, Toullier, vol. 10. c. 6. s. 8, art. 1, Foelix, *Droit International*.

*Mr. Harcourt* and *Mr. Bompas*, for the respondent, were not heard.

LORD CHAIRS delivered the judgment of their Lordships.—In this case the appellant, about twenty-one years ago, brought an action in the Courts of Lower Canada against the respondent, for the recovery of a lot of land which is described in the pleadings. The appellant claimed title to that lot under a grant originally made to a person of the name of John Rankin, and proposed to deduce his title from that John Rankin.

It is necessary to consider, in the first place, what was the character of the issue raised by the pleadings with regard to the title of the plaintiff, because it has been contended that certain matters of evidence with regard to his title, which it otherwise would have been necessary to have proved in the regular course, were removed out of the region of proof, by reason of admissions which are said to have been made in the pleadings between the parties.

The declaration had stated a deed of sale, by which this lot of land had been conveyed to the appellant from those who had the right to convey it, and in answer to that declaration, the second plea, after alleging possession for a certain length of time by the respondent of the lot in question, averred distinctly, "that the persons from whom the plaintiff pretends to have purchased the said real estate never had, nor hath the plaintiff ever had, nor have they, or either of them,

any right, title, interest, possession, or property of, in, or to the said real estate, or any part thereof." It is possible (their Lordships express no opinion upon the point) that at that stage of the pleadings the appellant might have taken issue upon this part of the second plea, and gone to trial upon those general allegations as they stood up to that point, putting in evidence the proof of the different links of the title under which he claimed; but in place of doing that, the appellant met the second plea by an extremely special replication or answer. He professed on the face of that answer to answer the second plea, and the character of his answer (it is unnecessary to read it at length) was in substance a statement of what may be termed his abstract of title. It was a statement in an abstract form of the various stages of the title, commencing with the letters patent to John Rankin, then setting forth the will of one David Rankin, then stating the seizin of persons of the name of Alexander (otherwise called James) Lake and Mary Lake under the will of David Rankin, and stating further the execution of a power of attorney to one Teesles, by Lake and his wife, under which power of attorney, and a deed executed in virtue of it, the appellant claimed.

To that answer a replication was put in by the respondent, saying "that all and every the allegations, matters, and things in the said special answer contained and set forth, save and except in so far as they corroborate and confirm the allegations, matters, and averments of the defendant in his said second plea contained and set forth, are, and each and every of them is false, untrue, and unfounded in fact."

Now, without turning to the *défense en fonds en fait*, or considering what the effect of that would have been, if it had stood alone, either by statute or otherwise, in the Courts of Lower Canada, their Lordships are clearly of opinion that both upon the most technical construction which can be applied to pleading, and also upon the substance and sense of these pleadings, there was here the clearest putting in issue, on the part of the respondent, of every stage and point in the title which was alleged on the part of the appellant. It may be added that there appears no

- (1) 1 Dowl. & Ry. 324.
- (2) 10 B. & C. 511.
- (3) 1 J. & W. 180.
- (4) 1 Madd. 227.
- (5) 6 Low. Can. Jn. 251.
- (6) Stuart's Low. Can. Rep. 106.
- (7) 2 Low. Can. Rep. 106.
- (8) 6 Low. Can. Rep. 294.



reason to suppose that the respondent could possibly have known anything with regard to the particulars of the title of the appellant, and it would indeed have been strange if he had taken upon himself in a suit of this kind to admit any links of that title; but, in point of fact, he did not do so. On the contrary, in the plainest way that words could do, he traversed every stage of the allegations which the appellant had made.

Their lordships, therefore, are obliged to approach the farther questions in the case, the questions which have arisen with regard to the evidence, and the sufficiency of the evidence, with the clear opinion, that so far as pleading could go, there was no admission of anything which could otherwise be the subject of evidence; but on the contrary, the appellant was challenged to produce, in the strictest form, the evidence necessary to support his title.

Now there were two most important links in the chain of the appellant's title. David Rankin had made a will by which, assuming him to have a good title to the lot in question derived from the grantee under the letters patent, he devised and bequeathed this lot to Mary Lake, whom he described as the "wife of James Lake, of Loughborough, yeoman, and adopted daughter of the late James Bleakaby, of Loughborough, yeoman, deceased." It appears that in the power of attorney under which the appellant claimed, the persons giving and executing that power of attorney called themselves "Alexander Lake, and Mary Lake his wife;" and on the face of the power of attorney it was stated that this Alexander Lake was the same person who, in the will of the testator, David Rankin, was called "James Lake." That may be perfectly true. Mistakes of that kind not unfrequently happen, and although such mistakes are by no means fatal to the devise in which the mistake may occur, yet it would be obviously necessary for the person claiming under a will of this kind, to adduce some evidence that the mistake which he alleges had actually taken place, and that he who now calls himself "Alexander Lake," was really the person whom the testator meant to describe when he used the name "James

Lake." Of course there are many ways in which that could have been done. Evidence might have been given as to the identity of Mary Lake. The person who was the adopted daughter of James Bleakaby might have been traced, evidence might have been given with regard to her history, and it might have been shown that she who appears thus to have been minutely described in the will of the testator, had married a person whose name was really Alexander Lake. Evidence of that kind, and I might say evidence, if uncontradicted, of a very slight kind, would probably have been sufficient to satisfy the Court that the mistake was the mistake of the testator, and that the person who really was called Alexander Lake, was the person whom the testator meant to describe when he called him "James Lake," the husband of this Mary Lake.

However, no evidence of that kind appears to have been adduced; and at this point their lordships consider that there was a complete hiatus in the title of the appellant, and that there is no identity made out between the devisee and the husband of the devisee named in the will of David Rankin, and the persons who profess to execute the power of attorney, and who there are called Alexander Lake and Mary his wife.

But then this power of attorney professes to have been executed by this Alexander Lake and Mary Lake before a notary public in the town of Kingston, in Upper Canada, and to have been executed by Alexander Lake and Mary Lake, in the presence of two witnesses, of whom the notary public was one. The first attesting witness, Henry Smith, is not produced. The notary public is not produced. But a certificate is produced, given in the province of Upper Canada, professing to come from this Samuel Rorke, the notary public, and to be vouched by Sir Richard Jackson, the administrator of the government of the province of Canada, who states in his certificate that "Samuel Rorke, whose name is subscribed to the foregoing notarial certificate, is a notary public, duly appointed in and for that part of the province of Canada, formerly called Upper Canada." Now, the question arises whether in the Courts of Lower Canada,

regulated by French law, the production of a power of attorney not proved by the attesting witnesses, but certified by the certificate—not upon oath—of the notary public before whom it appears to have been past, is sufficient in point of evidence.

Their lordships may say that upon this point there appears to have been no real difference between the learned judges of the Courts below. There has been a difference between these learned persons, and one of them has thought the title of the appellant sufficiently made out; but that, as their lordships consider, is not because he differed from his colleagues as to the effect of the evidence, but because he thought that upon this point evidence was altogether unnecessary, by reason of the form of the pleadings, a question upon which their lordships have already expressed their opinion. The learned judges may, therefore, be taken as agreeing that by the law of Lower Canada this certificate, given by a notary public of Upper Canada, was not sufficient proof of the execution of the power of attorney.

In that opinion their lordships entirely concur. A notary public in the province of Upper Canada, a province regulated by English law, has no power, by English law, to certify to the execution of a deed in such a way as to make his certificate evidence, without more, that the deed was executed, and that it was attested in the manner in which the deed professes to be attested.

It is familiar that according to the law of England, the mere production of the certificate of a notary public stating that a deed had been executed before him, would not in any way dispense with the proper evidence of the execution of the deed. The circumstance that by French law a French notary public has a greater power, and that his certificate has a greater validity, does not appear to their lordships to carry a power to the act of the English notary upon English soil, so that that act when brought into question upon French soil should have the effect given to it there which is given by the law of France to the act of a French notary public. The circumstance that an officer is called in France a notary public, with certain powers assigned to him by French

law, and that in England there is also an officer called a notary public, with much more limited powers assigned to him by English law, would not in any way make the act of the English notary public, when it is called into question in France, have the effect which it would have had if it had been an act done by a French notary public, upon French soil.

Their lordships, therefore, are of opinion that upon these two points, without going further, the appellant failed altogether to make out his title in the Court below, and they will humbly recommend to Her Majesty that the appeal be dismissed with costs.

Their lordships can only express the surprise they feel that if these points, which may appear to be and are to a great extent points of technicality, were points upon which the defects in the evidence to which they have referred, could have been remedied, the much shorter and more inexpensive course was not taken of treating the action as having failed (as the learned judges said it did fail) for want of evidence, and of bringing a new action supplying these defects, in place of going to the great expense and delay of an appeal to Her Majesty in Council.

---

Attorneys—Wilde, Wilde, Berger & Moore, for appellant; Bischoff, Cox & Bompas, for respondent.

---

1870.  
July 22. { ROBERT GRAHAM, acting collector  
of customs of the Cape of  
Good Hope, appellant, JOHN  
THOMAS POCOCK AND JOHN AL-  
FRED MATHEW, respondents.\*

*Cape of Good Hope—Customs Ordinance*  
(No. 6, ss. 24, 25, and 50)—*Construction—*  
*Entry—Penalties.*

*Ordinance No. 6 of the Cape of Good Hope, by section 24, provides that no goods shall be laden or unladen from any ship in the colony until due entry shall have*

\* Present—Lord Cairns, Sir J. Colville, and Sir J. Napier.

been made of such goods and warrants granted for the unloading of the same (1).

Section 25 provides that the person entering any goods shall deliver to the collector a bill of entry thereof, containing, amongst other things, the particulars of the quality and quantity of the goods, and the packages containing the same (2).

Section 50 provides that every person who shall assist or be otherwise concerned in the unshipping, landing, or removal or harbouring goods liable to forfeiture, or into whose

hands the same shall knowingly come, shall forfeit treble the value thereof (3).

P. and M. carried on business in partnership at Cape Town. P. consigned 25 cases of glassware and 3 cases, each containing a carriage, and filled up with corks, to M. at Cape Town. On the arrival of the goods, M. made out one entry for 3 cases containing carriages and 25 cases of glassware. There was no entry in respect of the corks:—Held, first, that it is the duty of the person who applies to enter goods, for the purpose of having them unladen, to state the packages the unloading of which he asks for, and to identify those packages, and to state the particulars of the quality and quantity of the goods contained in the packages, and that the whole of the contents of 3 cases containing the corks was forfeited. Secondly, that, inasmuch as there may be several entries on one bill of entry, the cases containing glass ware were not forfeited. Thirdly, that under the circumstances, M. was liable to the penalties imposed by section 50.

This was an appeal from two judgments of the Supreme Court of the colony of the Cape of Good Hope, bearing date respectively the 4th day of September, A.D. 1868, in two actions brought by the appellant against the respondents.

The first was an action in which the appellant prayed that certain goods might be declared to be forfeited. The second was an action in which the appellant prayed that the respondents might be declared to

(1) Ordinance 6:—

Sect. 24. That no goods shall be laden or waterborne to be laden on board any ship or unladen from any ship in this colony, until due entry shall have been made of such goods, and warrants granted for the lading or unloading of the same; and that no goods shall be so laden or waterborne, or so unladen, except at some place at which an officer of customs is appointed to attend the lading or unloading of goods, or at some place for which a surffiance shall be granted by the collector or other principal officer of customs for the lading and unloading of such goods; and that no goods shall be so laden or unladen except in the presence, or with the permission, in writing, of the proper officer: Provided always, that it shall be lawful for the governor to make and appoint such other regulations for the carrying coastwise of any goods, or for the removing of any goods for shipment, as to him shall appear expedient, and that all goods laden, waterborne, or unladen contrary to the regulations of this ordinance, or contrary to any regulations so made and appointed, shall be forfeited.

(2) Sect. 25. That the person entering any goods shall deliver to the collector or other proper officer of customs a bill of the entry thereof, fairly written in words at length, containing the name of the exporter or importer, and of the ship and of the master, and of the place to or from which bound, and of the place within the port where the goods are to be laden or unladen, and the particulars of the quality and quantity of the goods and the packages containing the same, and the marks and numbers on the packages, and setting forth whether such goods be the produce of the United Kingdom or of the British Possessions or not, and shall also deliver at the same time one or more duplicates of such bill, in which all sums and numbers may be expressed in figures; and the particulars to be contained in such bill of entry shall be written and arranged in such form and manner, and the number of such duplicates shall be such as the collector or other principal officer shall require; and such person shall, at the same time, pay down all duties due upon the goods, and the collector or other proper officer of customs shall thereupon grant their warrant for the lading or unloading of such goods.

(3) Sect. 50. That all vessels, boats, carriages, and cattle made use of in the removal of any goods liable to forfeiture under this or any future ordinance or act of the legislature of this colony, or under any act of the imperial Parliament relating to the customs, or to trade and navigation, shall be forfeited; and every person who shall assist or be otherwise concerned in the unshipping, landing, or removal, or in the harbouring of such goods, or into whose hands or possession the same shall knowingly come, shall forfeit the treble value thereof, or the penalty of one hundred pounds, at the election of the officers of the customs, and the averment in any information or libel to be exhibited for the recovery of such penalty, that the officer proceeding has elected to sue for the sum mentioned in the information, shall be deemed sufficient proof of such election, without any other or further evidence of such fact, and that such officer shall be a competent witness in any such suit or proceeding.

have forfeited the sum of 796*l*. 6*s*. 9*d*., being the treble value of certain goods, to wit, 3,350 gross of corks, landed clandestinely, and by the first action declared to be forfeited.

The appellant was the acting collector of and principal officer of customs of the colony of the Cape of Good Hope.

The respondents were partners carrying on business in Cape Town.

On the 8th of May, 1868, a vessel called the *Loch Awe*, bound from London to the Cape of Good Hope, arrived in the port of Cape Town, having on board a general cargo. As part of such general cargo there were laden on board of the said vessel, the goods which the appellant prayed should be declared forfeited, to wit: 3,350 gross of corks, 25 cases of glassware, and 3 carriages, namely, 1 brougham, 1 basket carriage, and 1 wire accessible.

The said carriages were packed in 3 separate cases, each containing 1 carriage; and the said 3 cases carriages, and 25 packages glassware were described by the marks and numbers of each package in a bill of lading thereof, dated in London, 22nd of February, 1868, which was prepared under the directions of respondent, Pocock, and signed by the master of the said vessel.

The said 3 cases, carriages, and 25 cases glassware were also described by their respective marks and numbers in the report of the ship signed by the master at the Custom House, at Cape Town, in accordance with the customs' regulations.

The said 3 cases, carriages, and 25 cases glassware were also described in a policy of insurance thereof effected by the respondents.

There was no mention of corks in any of the documents.

The said 3,350 gross of corks were packed in the 3 cases containing the carriages. Each of these 3 cases contained corks.

On the 8th of May, 1868, the *Loch Awe*, being then in the port of Cape Town, and ready to discharge her cargo, the respondent, Mathew, made out the entry for the landing of the 3 cases carriages and 25 cases glassware. This entry he delivered to the senior examining officer in the cus-

toms department of the colony, who passed it.

The respondent, Mathew, produced two invoices, the one being the invoice of the carriages, and the other the invoice of the glassware. On the production of the invoices, the goods were allowed to be landed, and two of the cases of carriages were landed on the afternoon of the same day, under the directions of the respondent, Mathew, and were conveyed to and placed in the business premises of the firm, by people employed by the respondents.

On the 9th of May, 1868, one of the examining officers of the customs of the said colony, acting upon information he had received, stopped the remaining carriage case and 25 packages of glassware, which had then been taken out of the ship by the respondents, and were on the landing place preparatory to being conveyed to the respondents' premises. The examining officer sent for the respondent, Mathew, and demanded his invoice, and an invoice was produced with the entry, with which it was found to agree, and the officer then proceeded to open the carriage case. The respondent, Mathew, then said, "You will find corks in that case." He had not spoken of corks before. Finding corks in the case, the officer told respondent, Mathew, to consider the goods under seizure, and he then proceeded to the respondents' premises, and examined the other cases, which had been landed on the previous day. He found that both contained corks, and at once seized the cases.

All the goods in question, viz., the carriages, the glassware, and the corks had been shipped in England on board the *Loch Awe* by the respondent, Pocock, who directed the packing of the corks and the preparation of the bill of lading before-mentioned. The respondent, Pocock, sent the invoices of the carriages and the 25 cases of glass were to an agent at Cape Town, and on the 7th of March, 1868, wrote from London to the said agent stating that the cases were filled with corks, which were to be sent to the firm of Pocock and Company, and that Mathew would pay the duty on them. The respondent, Pocock, also wrote to the respondent, Mathew, a letter bearing the

same date, informing him also on the subject.

On the 24th day of June, 1868, the appellant commenced an action against the respondents in the said Supreme Court. The declaration averred that the said goods, viz., the 3 cases of carriages, 25 cases of glassware, and 3,350 gross of corks had been taken by the respondents, who were the importers thereof, by virtue of an entry in which the said goods were not properly described, that the said entry ought to be deemed invalid, and the goods ought to be deemed goods taken without due entry thereof, and to be forfeited: and prayed a forfeiture of the said goods under Ordinance No. 6 of 1853.

The respondents pleaded to the declaration—a plea denying all the allegations of fact and conclusions of law contained in the declaration.

On the 24th day of August, 1868, the parties appeared before the acting Chief Justice of the colony, and one of the Puisne Judges of the said colony. The Court heard and considered the evidence, and on the 4th day of September, 1868, the Court gave judgment for the appellant, and decreed that the 3,350 gross of corks and the three carriages were forfeited.

From this judgment the appellant appealed.

The second action was commenced by appellant against the respondents at the same date as the former action. The declaration was founded on the 50th section of the said Ordinance No. 6, 1853, and averred that the respondents, or one of them acting on behalf of both, landed clandestinely 3,350 gross of corks without payment of duty thereon, and thereafter harboured and knowingly received into their possession the said goods. The declaration further averred that the appellant elected to sue for the treble value of the said goods in lieu of suing for the specific penalty provided, and prayed that the respondents might be declared to have jointly and severally forfeited the sum of 796*l.* 6*s.* 9*d.*, being the treble value of the said goods.

The respondents pleaded, denying all the allegations of fact and conclusions of law contained in the declaration.

This action was tried on the 4th day of  
NEW SERIES, 39.—PRIV. COUN.

September, 1868, before the same judges. The Court having considered the evidence and heard counsel for the parties respectively, gave judgment for the respondents with costs.

From this judgment, the present appeal was brought.

*Mr. Mellish* and *Mr. Archibald*, for the appellant.—It cannot be disputed that the corks contained in the three cases entered as carriages are liable to forfeiture. But it is clear that the entire contents of the cases, the quality and quantity of which are defective, are forfeited. The 24th section of the ordinance requires a full entry of the goods. Then section 25 requires the particulars of the quality and quantity of the goods and packages containing the goods to be entered. There was a failure in the performance of the express provisions of this ordinance. The goods are therefore forfeited, and the respondents were liable to the penalties sued for in the second action. The conduct of the respondent, Mathew, at the time when he applied to the collector for the delivery of the goods, shews that he knew the goods were liable to be forfeited.

The respondents did not appear.

LORD CAIENS delivered the judgment of their Lordships.—The first question raised by this appeal is, what goods were rendered liable to forfeiture to the Crown, by reason of defective entry? That the corks which are in question in the case were rendered liable to forfeiture is not disputed. It is contended by the appellant, that not only were the corks forfeited to the Crown, but that in addition, the 15 and 10 casks of glassware were forfeited; and, although the question has not been brought by any cross appeal before their Lordships, a suggestion has been made by the Chief Justice of the Supreme Court, to which in the first instance their Lordships will deem it their duty to advert—a suggestion that the Court in the colony has gone beyond what properly it ought to have done, in declaring that the three carriages in which the corks were contained were also forfeited.

Their Lordships are of opinion—although, I repeat, the question has not  
G

been brought before them by any regular appeal upon this subject—that those carriages were properly forfeited. Their Lordships consider that, under the 24th and 25th sections of the colonial ordinance, it is the duty of any person who applies to enter goods for the purpose of having them unladen, to state the packages the unloading of which he asks for, and to identify those packages; and then their Lordships consider, that it thereupon becomes further the duty of the person making this application to state the particulars of the quality and of the quantity of the goods which those packages, according to his knowledge, contain. If that statement is inaccurately made, their Lordships are of opinion that there is, in that respect, a defective and improper entry, rendering the goods liable to forfeiture. In this case (confining the observation still to the question of the carriages), there was a demand made for the entry and unloading of three cases, having upon them particular marks; and, according to the construction which I have stated their Lordships put upon the section, it thereupon became the duty of the person tendering the entry to state what those three cases contained. He stated that they contained one brougham, one phaeton, and one sociable, whereas, in point of fact, they contained those three carriages and also a large quantity of corks, filling up the empty spaces. Their Lordships are of opinion that there is no ground for the doubt entertained by the Chief Justice, and that the judgment of the Court, in holding forfeited the whole of the contents of those packages, was a correct judgment.

But then arises the question brought before their Lordships directly by the appeal, whether the 25 cases of glassware were also forfeited. That depends upon the construction which ought to be given to the word “entry” throughout the sections of the ordinance, which have been referred to. Their Lordships are of opinion that it would not be a sound or proper construction to read the word “entry” throughout those clauses as meaning “bill of entry;” because they are of opinion that there may be several

entries upon one bill of entry. What shall be considered to be the different entries, if there be more than one upon one bill of entry, will depend upon the facts of each particular case, the construction of the bill of entry, and the nature of the goods which it describes. A case, for example, might easily be put, where 50 cases of goods precisely *ejusdem generis* were entered under one head, and as contained in cases marked No. 1 to No. 50. It is obvious that that entry, although relating to 50 cases, would really be one entry.

But, in the present case, their Lordships think there can be no doubt, from the manner in which the entry has been tendered, that there are upon the bill of entry two entries which are distinct for all substantial purposes; the first entry being that of the three carriages in the three cases to which I have already referred, and the second being a separate entry of 25 cases of glassware. With regard to those cases of glassware, their Lordships cannot find any provision in the ordinance which has been violated or departed from; and they are therefore of opinion that there was a proper entry of those packages of glassware, and that they were not liable to forfeiture, or rendered liable to forfeiture, by reason of being associated in the same bill of entry with that other entry which their Lordships consider was a defective entry.

The result is, that on the first part of the case their Lordships consider the judgment of the Court below is correct, and ought not to be altered.

The second part of the appeal raises the question, whether the respondents, or either of them, has become liable to the treble value of the forfeited goods?

I may put out of the case the first respondent, Pocock, for it was admitted that there was no case of personal culpability against him. The question only arises with regard to the defendant Mathew. As regards the facts of the case, resulting from the oral evidence, their Lordships have no hesitation in saying, that in their opinion, that evidence shews that Mathew was a person directly concerned in, if he was not the person ordering and entirely responsible for, the un-

shipping, the landing, and the removal of the goods which they hold to be liable to forfeiture. Their Lordships, therefore, see no reason for the opinion entertained by the Court below that the only terms in the ordinance under which Mathew can be brought would be the words relating to the harbouring of goods. They are of opinion that he was a person either unshipping, landing, and removing the goods, or a person concerned in the unshipping, landing, and removing of the goods.

Their Lordships are of opinion, further, that it is not made an element in the 50th clause of the ordinance that the defendant should be a person unshipping, landing, and removing the goods, with the fraudulent intent of depriving the government of the duty properly payable upon their goods. The question of fact is all that the clause requires to be determined—Was the defendant, or was he not, a person who was actually concerned in unloading and unshipping the goods liable to forfeiture? Their Lordships are also of opinion that it is not any answer to the charge under this section to say that the respondent Mathew was the owner of the goods, and therefore, as it were, the principal concerned, and not an accessory. The proceeding under the first part of the record was not a proceeding personally against any individual. It is a proceeding for the forfeiture of particular goods, and the question who is the owner of the goods under that part of the proceeding is immaterial. The goods having been forfeited by a proceeding, which is in the nature of a proceeding *in rem*, the question who is liable to penalties for being concerned in the landing or the unloading of the goods is a question to be determined irrespective of the inquiry, Who is the principal and who is the accessory?

Their Lordships consider that upon the facts appearing on the evidence, it is abundantly clear that the defendant Mathew was aware before these goods were unshipped, and at the time he tendered the entry, that the cases contained the corks, and that he was aware when he was concerned in unshipping them that he was unshipping cases of goods containing certain goods as to which no

mention had been made in the bill of entry.

Therefore, their Lordships are clearly of opinion that all the elements of the offence created by the 50th section concur in the case of Mathew, and that he has become liable to the penalty of the treble value of the goods under that section. They will therefore humbly advise Her Majesty that the appeal in that respect should be allowed, and that judgment should be given for the Crown in the proper form for the treble value of the goods forfeited.

Attorneys—Green & Allin, for appellant.

1870.  
July 7.

GEORGE LYALL, *appellant*.  
ROBERT JARDINE, CHARLES  
FREDERICK STILL, GEORGE  
FRANCIS MACLEAN, AND  
OTHERS, *respondents*.\*

*Hong Kong—Bankruptcy—Adjudication*  
*—Prior Bankruptcy in England—Judicial*  
*Committee—Practice.*

*The Judicial Committee will not entertain an appeal upon facts which were known to the appellant at the time of hearing in the Court below, but which were not brought to the notice of the Court below.*

*Upon a petition for leave to appeal, it is the duty of the petitioner to state in the fullest and frankest manner all the circumstances of the case.*

*The appellant carried on business in partnership with S. & M. in London and also in Hong Kong. The firm being in difficulties, the appellant, who was in London, gave a power of attorney to S. at Hong Kong to act for him in all matters on behalf of the firm, and to take any proceedings in bankruptcy on his behalf, and on the 23rd of May, 1867, the firm was adjudicated bankrupt in the Supreme Court at Hong Kong, and the appellant was represented by counsel in the Supreme Court. In April, 1867, the ap-*

\* Present, Lord Cairns, Sir W. Erle, and Sir J. Colvile.

*pellant filed a petition in bankruptcy in England, and was adjudicated a bankrupt in England. This fact was known and might have been, but was not, brought to the notice of the Supreme Court:—Held, that inasmuch as the bankruptcy of the appellant in England was known and was not brought to the notice of the Court in Hong Kong, their Lordships would not entertain the fact of the bankruptcy in England on appeal.*

This was an appeal from an adjudication of bankruptcy by the Supreme Court at Hong Kong, dated the 23rd day of May, 1867, whereby the said George Lyall and the respondents Charles Frederick Still and George Francis Maclean were adjudicated bankrupts by the said Court, pursuant to the provisions of "The Bankruptcy Ordinance of Hong Kong (No. 5) of 1864."

The facts were as follows:—

In the month of April, 1867, and for several years previous, the appellant, George Lyall, and the respondents, Charles Frederick Still and George Francis Maclean, carried on the business of merchants in co-partnership at Victoria, in the colony of Hong Kong, under the style or firm of "Lyall, Still & Co.;" and in Leadenhall Street, London, under the style or firm of "George Lyall & C. F. Still."

The firm having fallen into difficulties towards the end of 1866, it was thought advisable that they should be made bankrupts in Hong Kong, where the said Charles Frederick Still and George Francis Maclean then were, the said George Lyall being in England; and with that view the appellant sent out to his co-partner Charles Frederick Still, a power of attorney, dated the 11th February, 1867, appointing him to act on his behalf in Hong Kong; and amongst other things to file any declaration or petition in bankruptcy, and to do all other acts in the liquidation of the liabilities of the firm in Hong Kong.

The power of attorney was received by Charles Frederick Still, in Hong Kong, early in the month of April, 1867, and on the 18th of that month a petition, dated the 13th April, 1867, and signed by Charles Frederick Still and George Francis

Maclean, for themselves and the appellant, was filed in the Supreme Court of Hong Kong, in the names and on behalf of the said George Lyall, Charles Frederick Still and George Francis Maclean, stating that they were unable to meet their engagements with their creditors, and praying that they might be adjudged bankrupts.

This petition was not acted on by the said George Lyall, Charles Frederick Still and George Francis Maclean, and on the 2nd of May, 1867, the appellant (by his attorney Charles Frederick Still), Charles Frederick Still and George Francis Maclean, by indenture assigned all their estate to be administered for the benefit of their creditors.

On the 21st of May, 1867, the respondent, Jardine, filed a petition in the Supreme Court of Hong Kong, praying for an adjudication in bankruptcy against George Lyall, Charles Frederick Still and George Francis Maclean.

On the 23rd of May, 1867, the last mentioned petition came on for hearing before the Chief Justice. Counsel appeared for the said George Lyall. The said Charles Frederick Still and George Francis Maclean appeared and consented to be made bankrupts, and numerous creditors asked for an immediate adjudication. The Chief Justice intimated that he considered that as George Lyall was resident in England, he was bound not to adjudicate until a copy of the petition had been served on him, and thereupon the counsel, who appeared for the said George Lyall, requested that the adjudication might then be made without service on the said George Lyall; and on his behalf consented to admit that he had been properly adjudicated bankrupt, and submitted to abide by such adjudication, and thereupon the Chief Justice did adjudicate the said George Lyall, Charles Frederick Still, and George Francis Maclean, bankrupts.

Charles Frederick Still and George Francis Maclean, who were at Hong Kong at the date of the adjudication, surrendered thereto, and passed their last examination, and respectively obtained their orders of discharge.

After the power of attorney given by the appellant had been received by



Charles Frederick Still, but before any adjudication in bankruptcy in Hong Kong proceedings in bankruptcy were taken against the appellant in the Court of Bankruptcy in London, and on the 18th of April, 1867, he was adjudicated bankrupt, pursuant to the provisions of the Bankruptcy Act, 1861, upon an act of bankruptcy committed by him on that day by filing a declaration of insolvency in the last mentioned Court of Bankruptcy, dated the said 18th day of April, 1867, and having surrendered to such bankruptcy, he passed his last examination on the 14th of February, 1868, and on the 4th of August, 1868, obtained his order of discharge.

On the 19th of June, 1868, the appellant applied for and obtained leave to appeal to Her Majesty in Council, from the adjudication in Hong Kong.

*Sargood, Serjt.*, and *Mr. Lord*, for the appellant. — The proceedings in bankruptcy in the colony as regards the appellant ought to be set aside. The appellant is compelled to resort to this tribunal in the first instance because the time has expired within which application can be made to the Court below. The 50th section of the Bankruptcy Ordinances of the colony requires any proceedings by way of appeal to be taken within twelve months of the adjudication. These Colonial Ordinances in respect of bankruptcy proceedings are similar to the enactments contained in the English Bankruptcy Act, 1849. There is no remedy under the Colonial Ordinances after the period limited, except by appeal to her Majesty in Council. The practice in England under these circumstances is to annul the prior adjudication. It is a well established principle of bankruptcy law that a bankruptcy cannot be double. If the bankruptcy in London was valid the bankruptcy in Hong Kong is invalid. The power of attorney given by the appellant to his partner, Still, to act in his behalf would cease to have any effect or to confer any authority on Still after the appellant committed an act of bankruptcy in England. Section 44 of the Colonial Ordinances is precisely similar in kind and import to the provisions contained in section 97 of the Bankruptcy Act, 1849. The

act of bankruptcy in the colony would have no operation as regards the appellant. There was no act of bankruptcy by the appellant in the colony. The deed executed by the partners in Hong Kong for the benefit of the creditors of the firm was executed by the other partners for themselves and the appellant in pursuance of the power of attorney which in fact had ceased to operate. It is clear, therefore, that all the proceedings taken in bankruptcy in the colony are at an end. They referred to *ex parte Crew* (1), *Carter v. Dimmock* (2), *The Royal Bank of Scotland v. Cuthbert* (3), *Ex parte Williams* (4).

*Sir R. Palmer* and *Mr. Watkin Williams*, for the petitioning creditor. — There is no precedent for such an appeal. The appellant had given a power of attorney to his partner, Still, and by virtue of that power Still appointed counsel to represent the appellant in the bankruptcy proceedings in the colony, and upon these proceedings the appellant was represented by his counsel, and by his counsel consented to all the proceedings in the colony, and although the Judge in the colony proposed to have the appellant served with a copy of the petition in bankruptcy, yet the appellant, by his counsel as representing him, declined to require service, and expressly by his counsel assented to the proceedings. The appellant has no *locus standi* before this tribunal. It is proposed to ask that the proceedings in the colony shall be reversed so far as the appellant is concerned, upon the ground that the appellant had been adjudicated bankrupt in England at the time the proceedings in bankruptcy in the colony took place, and it is said that the bankruptcy could not be double. But this tribunal will not help the appellant. All these facts now set up were known to the appellant at the time proceedings in the colony were taken, and might have been brought to the notice of the Judge of the Court below. If this had been known to this tribunal at the time leave to appeal was

(1) 16 Ves. 237.

(2) 22 Law J. Rep. (N.S.) Bankr. 55.

(3) 1 Rose Bankruptcy Cas. App. 462.

(4) 11 Ves., jun. 3.

granted such leave would have been refused. *Carter v. Dimmock* (2) is no authority.

*Mr. Hall*, for the respondents, Charles Frederick Still and George Francis Maclean.—The adjudication in Hong Kong was a valid adjudication. The filing of the petition in bankruptcy on the 13th of April, 1867, was an act of bankruptcy on the part of the firm. It was the act of all the partners. Still held a power of attorney from the appellant authorising him to act on behalf of the appellant, and expressly in matters relating to the bankruptcy of the firm. The power of attorney was given for that very purpose. The adjudication was therefore made with the concurrence of the appellant. He cannot now dispute the validity of such adjudication. Besides, all the facts and matters now alleged in support of this appeal were known to the appellant and might have been brought to the notice of the Supreme Court.

*Mr. Bell* and *Mr. B. Smith*, for the official assignees.—The appellant committed an act of bankruptcy, under the 16th section of the Ordinance, by petitioning the Supreme Court in April, 1867. Under the 35th section of the Ordinance, the Supreme Court had power to adjudicate the appellant a bankrupt. If the evidence before the Supreme Court were insufficient to support an adjudication, the appellant has, by his own petition of appeal, shewn that he had, at the time of the adjudication, committed an act of bankruptcy under section 12. The appellant is, by the acts of himself and his counsel, estopped from disputing the validity of the adjudication in the colony. The adjudication in England did not deprive the Court at Hong Kong of the power to issue a joint adjudication against the appellant and his partners. The appellant might have applied to the Supreme Court within twelve months of his adjudication to set aside the adjudication.

LORD CAIRNS delivered the judgment of their Lordships.

Their Lordships have, in the first instance, to advert to the circumstances under which leave to appeal was granted

in this case. Nothing can be more important than that it should be understood that those who come before this Committee upon an *ex parte* application for leave to appeal should consider it their absolute duty to state, in the fullest and frankest way, every circumstance connected with the history of the case which possibly can have any bearing on the leave for which they ask. Now their Lordships do not mean to attribute, either to the appellant, Mr. Lyall, or to his advisers, any intentional disregard of this duty, or any wish in the petition which they presented in the year 1868, to suppress any fact which they might have thought material; but, unfortunately, the petition is one which, when looked at, cannot be described otherwise than as a petition which was calculated to mislead the tribunal before whom it was heard. It states, in substance, that the appellant, Mr. Lyall, had been adjudicated a bankrupt in London on the 18th of April, 1867. It does not suggest that that had been done, either on his own application, or upon an act of bankruptcy committed by him with a view to have the application made by a friendly creditor. It then proceeds to state, that while he was thus in England adjudicated a bankrupt on the 21st of May, 1867, creditors of his firm in Hong Kong had filed a petition in the Court of that colony, for the purpose of making the firm bankrupts, and that on that petition they had been adjudicated bankrupts. He does not state that there had been any declaration of insolvency filed by the firm with a view to their bankruptcy in the colony, or that he had given a power of attorney to his partner in the colony, enabling him to take the proceedings proper to lead to a bankruptcy, or that there had been a conveyance or assignment of their property executed by the partners abroad, and by one of them as attorney for himself, with a view to bring about an adjudication in bankruptcy. It is treated as an adverse proceeding in the colony, just as the proceeding in bankruptcy in London is treated as an adverse proceeding against Mr. Lyall. It then proceeds to state that "during the time of these bankruptcy proceedings in the colony, and from

thenceforward, Mr. Lyall had been residing in England, had no notice of the adjudication, and was thereby rendered unable to shew cause against the validity of the same within the time limited by, and pursuant to, the provisions of the Bankruptcy Ordinance, 1864." It does not state that under the professed authority of the same power of attorney consent had been given in the colony to expediting and making perfect, as far as consent could do it, the proceedings in bankruptcy; but it treats the whole of those proceedings as proceedings which Mr. Lyall would, in every way, have opposed and objected to had it been in his power. It assumes, rather than expressly states, that he had come before this tribunal at the earliest moment, for the purpose of protecting rights which had been infringed; and it does not state, what now appears to have been the case, that upon the 8th of July, 1867, Mr. Lyall, who must have known before of the power of attorney which he had given, had become aware that that power had been acted on, and that those proceedings in bankruptcy in the colony had taken place, and that from the 8th of July, 1867, when he had this knowledge, until the 12th of May, 1868, a period of about ten months, he had remained quiescent, and had taken no step, either in the colony or here, for the purpose of disputing the proceedings in bankruptcy. Under those circumstances, upon statements so eminently insufficient to put this tribunal in possession of a knowledge of all that had occurred, and aided, doubtless, by the view which seems to have been entertained by the advisers of Mr. Lyall, which, no doubt, was pressed upon their Lordships, that after the shorter period of a few weeks, mentioned in the Bankruptcy Ordinance, there was no remedy in the colony, and the only remedy could be here, their Lordships granted the leave to appeal.

Stopping at this part of the case, their Lordships cannot but think that if the whole facts, which I have endeavoured to state, had been made known to their Lordships upon the face of this petition, they would have felt themselves unable, under the circumstances, to have granted the leave to appeal which was granted.

Passing, however, from that, their Lordships have next to consider whether, this leave having been granted, the appeal is one which they properly can entertain.

Now the appellant is obliged to come here virtually confessing, at the outset, that if he is limited to the materials which were before the Judge in the colony at the time that this adjudication was made, and if he is not allowed to import into the case the other facts with regard to the London bankruptcy, and its bearing upon what was done in the colony, he is unable to sustain his appeal, and is unable to deny that the proceedings in the colony were regular. In that view of the case they clearly would be regular. There was an assignment by the three partners of all their property, an assignment executed by two, and by one of the two as attorney for the third, under a power which clearly authorised him to execute that assignment. There was, therefore, an act of bankruptcy—there was a trading; there were all the requisites proper to found a bankruptcy, and there was a proper adjudication upon those requisites, and upon those materials there would be nothing to argue.

Admitting that on the materials before the Judge the order was proper, the appellant has to contend that this tribunal should look at the other facts which had occurred at the time, although they were not known to the Judges, namely, the English bankruptcy and its bearing upon the colonial proceedings; and he has to contend that, looking to the whole of those facts, the order is one which ought not to be supported. Now, their Lordships desire to intimate their opinion with great distinctness that that is not a purpose for which this tribunal can be resorted to. This is an appellate tribunal—an appellate tribunal, no doubt, which possesses large powers to admit in proper cases, by way of supplement, evidence upon points which upon the hearing may appear to require to be elucidated, but this is certainly not a tribunal to which resort can be made by those who are obliged at the outset to confess that they have no case for appeal as the matter stood before the Judge who heard the case in the colony, and that their only ground for appeal is

the introduction of other matters which were in no way before the Judge of primary instance.

Their Lordships further think that there is nothing whatever in the construction of the 182nd section of the Hong Kong Bankruptcy Ordinance which would have prevented, but that there is everything which would have empowered the present appellant, if he had been prepared to bring before the Judge in the colony further evidence leading to a different conclusion from that to which the Judge arrived in adjudicating in the first instance, to have gone to the Judge in Hong Kong within the prescribed period of twelve months, to have brought those further questions before him, to have taken his decision, by way of rehearing upon this new matter, upon the whole of the case; and then would have been the time, if the appellant had been dissatisfied with the decision of the Court, that his right might have arisen to appeal to Her Majesty in Council.

Their Lordships observe that the case "In the matter of Carter," decided in the House of Lords, which was referred to in argument, does not appear to their Lordships to have any contrary bearing to the conclusion at which they have arrived. In that case it appeared that the bankrupt, having abstained from shewing cause against the adjudication, although he was in the country, and might have done so within the shorter time appointed by the English statute, afterwards applied to the Commissioner in London within the twelve months, not upon any new materials, but simply for the purpose of disputing the propriety of the adjudication upon the materials upon which it was made, and against which he might have shewn cause within the proper time. The House of Lords held that this was a course which was not open to him; and Lord Cranworth, in announcing the decision of the House of Lords, states expressly that it was only playing with words to treat that proceeding as anything but an appeal; that the second application to the Commissioner, without any change of the materials upon which it was to be supported, was simply appealing to the Commissioner from his own order, and upon the same materials; and that on the proper con-

struction of the English Act, the course which ought to have been taken was to make an application in such a case to the Court of Appeal, namely, the Lords Justices, and not to the Commissioner. Those remarks have no relevancy to a case where the second application to the primary Court is made, not on the same, but on different materials.

Their Lordships, therefore, upon this ground alone, would feel themselves unable to entertain this appeal, and this observation is sufficient for its disposal. Their Lordships, however, are bound to add that, although they do not propose to travel out of their proper functions, and to decide as a Court of first instance upon the merits of a case, which never was brought before the Judge at Hong Kong, they have not been satisfied by any argument which they have heard, that if this matter had been brought, with these new materials, before the Judge in the Court at Hong Kong, it would have been the duty of that Judge to have superseded or annulled the bankruptcy. There appears to have been an act of bankruptcy constituted, if not by the assignment made subsequent to the London bankruptcy, yet by the declaration of insolvency filed by the two partners upon the spot, and signed by them on behalf of their absent partner as well as of themselves; and that, at the time when there had been dispatched to one of those partners a power of attorney which clearly gave him authority to file a declaration of that kind. Their Lordships are not satisfied that the circumstance, that before the proceedings in bankruptcy were taken in that colony, there had been a London bankruptcy of Mr. Lyall alone, would necessarily have prevented, or ought properly to have prevented, the adjudication against the firm in the colony. It might give rise to questions between the assignees under the two bankruptcies as to what were their relative rights of property, but their Lordships are by no means satisfied that it would not be altogether within the power and discretion of the Court, after a separate bankruptcy against one of the partners in England, to have a joint bankruptcy against the firm, upon proper materials in the colony, leaving it of course open to the English assignee to

make any application as to the conduct of that bankruptcy, or the rights under it, which he might be advised to make; and they are not satisfied that it would lie in the mouth of Mr. Lyall—especially after the power of attorney which he executed, after the appearance made on his behalf under that power in the Court by counsel, after the consent given on his behalf under that power to the completion of the proceedings in bankruptcy in the colony—in any way to quarrel with what had been done by those proceedings.

Upon the whole their Lordships are clearly of opinion that it is their duty to advise Her Majesty that this appeal should be dismissed, with costs to be paid to the various respondents. Their Lordships are informed that there is a sum of 300*l.* deposited. Supposing the taxed costs of each respondent amount to a larger sum than one-third of that amount, it will be divided rateably among the three respondents.

Attorneys—Lawrance, Plews, Boyer & Baker, for appellant; Freshfields; A. Parsons; and Bailey, Shaw, Smith & Bailey, for respondents.

1870. } HUGO LEVINGER (*appellant*) v.  
July 26. } THE QUEEN (*respondent*).\*

*Victoria—Jury—Alien—De Medietate Linguae—Peremptory Challenge—Right of.*

"The Juries Statute Act, 1865," of *Victoria*, by sect. 37, provides that every person arraigned for any treason felony or misdemeanour shall be admitted to challenge peremptorily to the number of twenty jurors. Sect. 38 provides that on the prayer of any alien informed against for felony the sheriff shall, by command of the Court, return for one-half of the jury a competent number of aliens, if so many shall be found in the town, etc., and that no such alien shall be liable to be challenged for want of qualification, "but that every such alien may be challenged for any other cause in like manner as if he were qualified." An

\* Present, Lord Cairns, Sir J. Colville, and Sir J. Napier.

NEW SERIES, 39.—PRIV. COUN.

*information was exhibited in Melbourne against the appellant an alien for felony. The appellant prayed to be tried by a mixed jury, and challenged peremptorily an alien, one of such jury:—Held, that in the absence of positive provision to the contrary, an alien juror was subject to peremptory challenge, and that the appellant had a right to such challenge.*

This was an appeal from a judgment of the Supreme Court of the colony of *Victoria*, affirming a conviction for manslaughter on information preferred against the appellant.

On the 15th of June, 1869, an information, in the nature of an indictment for murder on the high seas, was exhibited against the appellant in the Supreme Court at Melbourne.

Upon the trial the appellant prayed for a jury *de medietate linguae*, on the ground that he was an alien, and a mixed jury was empanelled to try the appellant. Thereupon the appellant challenged peremptorily an alien, one of the said jury, to which challenge the Attorney General for the said colony, on behalf of the Crown, demurred, and the appellant having joined in demurrer, the Supreme Court gave judgment against the appellant, and adjudged that the challenge was insufficient in law, and that the alien juror was not liable to be challenged peremptorily.

The trial then proceeded, and the jury found the appellant guilty of manslaughter.

On the 6th June, 1870, the appellant obtained leave to appeal from this judgment.

The following are the material sections of the colonial statute, 28 *Victoria*, No. 272, "The Juries Statute Act, 1865:—

Sect. 36. "In all inquests to be taken before any Court wherein the Queen is a party, howsoever it be, notwithstanding it be alleged by them that sue for the Queen that the jurors of those inquests or some of them be not indifferent for the Queen, yet such inquests shall not remain untaken for that cause; but if they that sue for the Queen will challenge any of those jurors, they shall assign for their challenge a cause certain, and the truth of the same challenge shall be enquired of according to the custom of the Court, and it shall

H

be proceeded to the taking of the same inquisitions as it shall be found if the challenges be true or not, after the discretion of the Court."

Sect. 37. "Every person arraigned for any treason felony or misdemeanour, shall be admitted to challenge peremptorily to the number of twenty, and every peremptory challenge above the number aforesaid respectively shall be void, and the trial or enquiry shall proceed as if no such challenge had been made; . . . and unless the jurors or assessors shall be sworn for the particular trial or enquiry, every challenge shall be made as the juror or assessor comes to take his seat, and before he takes it."

Sect. 38. "On the prayer of any alien informed against for any felony, the sheriff shall, by command of the Court, return for one-half of the jury a competent number of aliens, if so many there be in the town or place where the trial is had; and if not, then so many aliens as shall be found in the same town or place, if any, and no such alien juror shall be liable to be challenged for want of freehold or of any other qualification required by this Act, but every such alien may be challenged for any other cause in like manner as if he were qualified by this Act."

*Sleigh, Serjt., Mr. Bell, and Mr. Thomas*, for the appellant.—An alien by the law of the colony of Victoria has the same right upon a trial for felony to a jury *de medietate lingue* as he has upon a trial for felony in England. The law in the colony is identical with the law of England. The "Juries Statute Act, 1865" (1), contains precisely similar provisions to those contained in the English statutes of Geo. 4. (2). Sect. 37 of the colonial statute gives to a person arraigned for any treason felony or misdemeanour a right of peremptory challenge to the number of twenty; and sect. 38 of the same statute gives an alien upon his trial the right to be tried by a jury, *de medietate lingue*; and the section expressly provides that no alien juror shall be challenged for want of a qualification in respect of freehold, "but that every such alien may be challenged

for any other cause in like manner as if he were qualified by this Act." It is quite clear from this that the right of peremptory challenge remains incident as part of the common law. The common law in respect of challenge must apply unless it is expressly taken away. They referred to *Blackstone's Com.* vol. 4. p. 353, *Coke's Institutes*, *The Queen v. Giorgetti* (3), *The Queen v. Gray* (4).

*The Attorney General (Sir R. Collier), The Solicitor General (Sir J. D. Coleridge), and Mr. Archibald*, for the Crown.—The appellant has no right to challenge peremptorily an alien juror. The right of an alien to be tried by a jury *de medietate lingue* is the creature of statute law, and an alien has no such right by the common law. The English statute which conferred the right on foreigners to demand to be tried by a mixed jury is the 28 Ed. 3. c. 13. That statute gives no right of peremptory challenge. The right claimed by the appellant must, however, depend upon the law as to jurors contained in the Juries Act, 1865. That statute, by sect. 37, gives an accused a right to challenge peremptorily to the number of twenty; but sect. 38, which gives the right to a foreigner to demand a mixed jury, is silent as to the right of peremptory challenge, and the reason is plain, namely, the great inconvenience which might arise by reason of such challenge. It is frequently difficult to obtain a sufficient number of foreigners. This question of peremptory challenge was considered in *The Queen v. Mansel* (5). Whatever right of challenge the appellant had must be given by the colonial statute law. They referred to *The Queen v. O'Connor* (6).

SIR JOSEPH NAPIER delivered the judgment of their Lordships.—In this case the appellant was arraigned at Melbourne, in the Supreme Court of the colony of Victoria, upon an information for murder, to which he pleaded not guilty, and put himself upon the country. He then suggested and set forth that he was an alien, and

(3) 4 F. & F. 546.

(4) 11 Cl. & F. 427.

(5) 26 Law J. Rep. (N.S.) M.C. 137; s. c. 8 E. & B. 54.

(6) 26 St. Tri. 1191.

(1) Acts of the Colony of Victoria, 28 Vic. No. 272, ss. 36, 37, 38.

(2) 6 Geo. 4. cc. 50, 60; 7 Geo. 4. c. 28.

prayed the Queen's writ for having a jury *de medietate* summoned for his trial on the information. This was granted, and a jury was returned and impanelled accordingly. The single question raised on this appeal is, whether the appellant was entitled to challenge peremptorily one of the jurors who was an alien. The Supreme Court disallowed the challenge; the trial proceeded, and the appellant was convicted.

The rule of the common law, as it has been modified by the 37th section of the Victorian statute, provides that every person arraigned for any treason felony or misdemeanour, shall be admitted to challenge peremptorily to the number of twenty jurors. (Juries Statute, 1865, No. 272.)

The right of peremptory challenge at common law was a principal incident of the trial of felony. When Sir E. Coke comments upon the 38 Hen. 8. c. 23, which for a time took away the right of peremptory challenge in cases of high treason, he says, "the end of challenge is to have an indifferent trial, and which is required by law, and to bar the party indicted of his lawful challenge is to bar him of a principal matter concerning his trial" (3 Inst. 27). In *The Queen v. Mansel* (5), Lord Campbell, C.J., observes that "unless this power were given under certain restrictions to both sides, it is quite obvious that justice could not be satisfactorily administered; for it must often happen that a juror is returned on the panel who does not stand indifferent, and who is not fit to serve upon the trial, although no legal evidence could be adduced to prove his unfitness." Section 36 of the Victoria Statute provides.

[His Lordship read the section.]

The right of the Crown, thus restricted, may be considered as in effect equivalent to a peremptory challenge, if, without having resort to such of the jurors as have been "set by" for the time on the part of the Crown, there can be procured, from those returned on the panel, enough of persons not objected to to make a jury. The restriction in practice imposed on the Crown is that it shall not exercise its prerogative so as to make it necessary to put off the trial for want of a jury, such as

the party arraigned is entitled to have upon his trial.

The right of this party to challenge peremptorily (but restricted to the number of twenty) is preserved under the 37th section in all cases of arraignment for any treason or felony, and it has been extended by this section to cases of misdemeanour.

It has been contended on the part of the Crown that this right of peremptory challenge, thus secured, was taken away in part by the appellant's having obtained the benefit of the 38th section, by which he was enabled, when arraigned for the felony, to claim a trial by a jury *de medietate*. The early statute which conferred this privilege on aliens in cases at the suit of the king, was the 28 Edw. 3. c. 13. s. 2, enacted "for the benefit and in favour of aliens." The words of the enactment are in the affirmative, professing to confer a privilege, not to take away a right confessedly material to secure an indifferent trial which is required by law.

Under the 37th section of the Victorian statute the right of peremptory challenge on the part of the prisoner on his arraignment is certain; but it is not equally certain that this right was taken away in part by the necessary operation of the 38th section; or that the rule of the common law, as to peremptory challenge, was interfered with in any such case by the necessary operation of 28 Edw. 3. c. 13. In a case where the question arose as to the taking away by implication the right of peremptory challenge in felony (*Gray v. The Queen*) (4), Tindal, C.J., said, "If the question be whether his right to the peremptory challenge has or has not been taken away, it appears to me that in accordance with the general principle of decision applied to criminal cases, *tutius erratur in mitiori sensu*, the decision of such question is to be given in favour of the prisoner, who is not to be deprived by implication of a right of so much importance to him, given by the common law and enjoyed for many centuries, unless such implication is absolutely necessary for the interpretation of the statute." An example of the like construction is to be found in *Hawk. P.C.* bk. 1, ch. 7, s. 9 (Felony and Misprision of Felony), where it is said, "If a statute

create a felony, and says that the offender shall suffer death, yet he shall in such case have the benefit of clergy, for this being a privilege allowed by the common law, cannot be taken away without express words."

The composition of a jury *de medietate* is prescribed by the statute, but the incidents of the trial are annexed by the common law, and are therefore implied and included in the statute. If on a *venire* of half denizens and half aliens, the sheriff returns twelve as aliens, and among them some who in truth are not such, the party may challenge the array for want of a sufficient number of aliens. (*Hawk. P.O. bk. 2, ch. 43, s. 43.*) There is no express provision in the statute for this, but it is not excluded, and that is enough. The right and the privilege are consistent and stand well together. Not only is there no inconsistency in retaining the right of peremptory challenge in a case like the present, and claiming the privilege of having a trial by jury *de medietate*, but there are sufficient reasons for making use of both.

In addition to what has been observed by Lord Campbell, C.J., as to peremptory challenge, and which applies to all jurors impanelled on a trial for felony, there may be aliens with national prejudices and hostile feelings against the prisoner, and objections which he could not make out by legal evidence. There is not a reason assigned in books of authority in favour of the right of peremptory challenge that is not at least as applicable (if not in some instances more so) to an alien as to any of the other jurors. It is to be observed that by the 38th section an alien juror impanelled on a jury *de medietate* is not liable to be challenged for want of freehold or of any other qualification required by the Act. This is in accordance with the principle of the earlier statutes (9 Hen. 6. c. 29, and others), by which the laws relating to aliens as to holding property were not allowed to interfere with the privilege of having a trial by a jury *de medietate*. The 34th section of the Victorian statute makes the want of qualification according to the Act a ground of challenge, and, therefore, it was necessary to remove this hindrance to an alien juror serving on such a jury, under the

38th section. This section places him in the same position as if he had the qualification required by the Act, but leaves him subject to be challenged for any other cause of challenge; that is to say, for any personal disqualification at common law, except alienage itself. The statute being in the affirmative, leaves the common law as to these unaffected. This is in accordance with the view of Mr. Justice Willes, in delivering the opinion of the judges in *Mulcahy v. The Queen* (7).

But for the express saving in favour of the alien juror, the disqualifications as to property would have attached, as in the cases of a denizen juror. In every instance where the legislature has not interfered in his favour, it will be found that an alien juror is dealt with as if he were a denizen. The closing words of the 38th section are obviously introduced *ex abundanti cautela*, and the words immediately preceding refer to challenges for cause, as distinguished from those that are peremptory.

It was not necessary to draw any distinction between the alien and the denizen moiety of the jury with reference to the law of peremptory challenge, the reason for which applied to both; but it was necessary to distinguish with reference to challenges for cause, and to make special provision as to these for the case of alien jurors on a jury *de medietate*. The words of the section relate to challenges for cause only, and are in the affirmative; so that the right of peremptory challenge is not in any way prejudiced.

Whenever the case requires it, and the reason of the rule applies, the law of juries, in the absence of a positive provision to the contrary, is applicable to jurors on a jury *de medietate*. The instance of a challenge to the array has been mentioned. There is another instance in the extension of the law as to a *tales*, where although the words in the statute were appropriate to the common trials of English, yet the law was extended to a jury *de medietate*. The case is reported in *Popham*, 36, and is fully set out in 10th Rep. 104-6. No case has been cited before the decision of the Supreme Court in 1866, and no text-

(7) 3 Law Rep. H. of L. Cas. 315.



book of authority has been referred to, in which the distinction contended for between the alien and the denizen portion of the jury *de medietate*, as to the law of peremptory challenge, has been suggested. The case of *The Queen v. Giorgetti* (3) seems to have proceeded on the principle that an alien juror impanelled was subject to peremptory challenge. As to the exercise of the right of the Crown, under the special circumstances of the case, it seems to have been reasonably restricted, so as not to prejudice or abridge the right of the prisoner to have a jury *de medietate* to try him, so far, at least, as it was practicable to obtain such a jury.

The result is, that their Lordships are of opinion that the challenge put forward by the appellant in this case ought to have been allowed. That neither in the provision for the composition of the jury *de medietate*, nor in that for relieving the alien jurors from liability to be challenged for want of a qualification under the Act, nor in that for preserving the liability for other causes of challenge existing at common law, is there to be found anything that takes away, or is inconsistent with, the right of peremptory challenge given by the common law and preserved by the statute as a principal incident of the trial of the felony, and consequent upon arraignment. Their Lordships, therefore, will humbly advise her Majesty that the appeal should be allowed, that the verdict and conviction should be quashed, and a *verine de novo* awarded.

Attorneys—H. A. Graham, for petitioner; The Solicitor to the Treasury, for the Crown.

PRIVY COUNCIL. } THE QUEBEC MARINE INSURANCE, *appellants*, v. THE COMMERCIAL BANK OF CANADA, *respondents*.\*  
1870.  
April 20.

*Marine Insurance—Seaworthiness—Implied Warranty—Inland Policy.*

*A policy of Marine Insurance headed "Inland Hull policy" insured the ship "West" against perils of "lakes, rivers, canals, fires,*

\* Present, Lord Penzance, Sir W. Erle and Lord Justice Giffard.

*jettisons, except damage from rottenness, inherent defects, and other unseaworthiness," "at and from Montreal to Nova Scotia." At the commencement of the voyage the boiler was defective, and after leaving Quebec and on getting into salt water "The West" met with bad weather and was lost:—Held, first, that the warranty of seaworthiness at the commencement of the voyage applied, although the policy was an Inland policy, the voyage being expressed by the policy to be from Montreal to Halifax; secondly, that the express provision as to seaworthiness in the policy did not exclude the implied warranty; thirdly, that, though there are different degrees of seaworthiness according to the nature of the voyage; yet where there are several stages in a voyage which involve different equipments a vessel must be seaworthy for each stage at the commencement of each stage.*

This was an appeal from the Court of Queen's Bench of Quebec, Canada.

The appellants were a Marine Insurance Company, and the action was brought by the respondents on a policy of insurance effected by their agent, on a steam vessel called *The West*, for a voyage from Montreal to Halifax.

The policy was headed "Inland Hull Policy," and was for 6,000 dollars on a steam vessel called *The West* "at and from Montreal to Halifax, in Nova Scotia," the vessel being warranted to sail on or before the 21st of November, 1864. The policy contained the following clause:

"Touching the adventures and perils which the said insurance company is content to bear and take upon itself by this policy, they are of the lakes, rivers, canals, fires, jettisons, that shall come to the damage of the said vessel or any part thereof. Excepting all perils, losses, or misfortunes arising from or caused by the following or other legally excluded causes: For damage that may be done by the vessel hereby insured to any other vessel or property.—From incompetency of the master or insufficiency of the crew, or from the want of ordinary care and skill in loading, and stowing the cargo of said vessel.—From rottenness, inherent defects, and other unseaworthiness.—From theft, burglary, or robbery.—From the bursting or

explosion of boilers, collapsing of flues, or breakage of machinery, unless occasioned by unavoidable external cause, or fire ensue therefrom.—From charges, damage, or loss in consequence of a seizure or detention, for or on account of any illicit or prohibited trade, or any trade in articles contraband of war.—From any claim for wages or provisions furnished to officers or crew, while the property insured may be detained by any disaster, or during subsequent repairs, excepting always services rendered in recovering and securing the vessel or property covered by this policy.—From anchors being cast without being properly and sufficiently buoyed.—From gangways and openings through the deck being improperly and insecurely secured and protected.”

The declaration, after setting out the substance of the policy of insurance, continued as follows:—“The plaintiffs say that the said vessel called *The West* sailed from Montreal within the period mentioned in the said policy, having on board a cargo, and arrived on the 25th day of November, abreast of Barnaby Island, on the Lower St. Lawrence, when the engineer reported that her boilers had become unserviceable, and a strong breeze from west-north-west causing her to roll heavily, she was brought to anchor under shelter of the said island, and a telegraphic message was despatched to Montreal to procure assistance. On the 29th of November an easterly breeze having sprung up, in order to bring the vessel to a place of safety, to repair her and to avoid driving on shore, the crew brought her into river Hokee Cove. On the 30th of November assistance arrived from Montreal, and her boilers were duly repaired; but, owing to the lowness of the tides, she was not able to proceed with her voyage until the 11th of December, when the weather being calm, clear and fine, she was taken out of Hokee Cove, and proceeded on her voyage. Towards the evening of that day the wind commenced to blow from the eastward and rapidly increased to a gale, with a very heavy sea. When abreast of Matane, and distant about 15 miles from the shore, the vessel worked so much as to disable her to meet the wind, and, on an attempt being made to turn her round to run her

before the wind, her rudder was broken by a heavy sea, which rendered her unmanageable. It was then blowing a hurricane, with a very heavy sea and a thick snow storm, and the crew fearing that she would capsize or break up, attempted to run her ashore; but her sails were carried away by the gale while they were in the act of setting them, and the vessel became completely at the mercy of the winds, and at seven in the morning of the 12th day of December she stranded about seven miles below Matane, and in a few hours became a total wreck.”

To this declaration the appellants pleaded the general issue and a perpetual *exception péremptoire du droit*, alleging that the vessel was unseaworthy at the commencement of the voyage.

Both parties then proceeded to take evidence, and it was proved that *The West* was a screw propeller, built in the year 1859, and had been used, up to the date of the voyage in question, entirely in fresh water navigation. Previously to starting, the vessel underwent some alterations at Montreal, to prepare her for a sea voyage, and her boilers were cleaned, but they were not otherwise repaired.

The engineer who had been previously on board the vessel was retained as chief engineer, though he had never been to sea, and was unacquainted with the management of engines in salt water; but a second engineer was obtained, who had been previously on sea voyages.

*The West* left Montreal on the 21st of November, 1864—the last day allowed by the policy of insurance—and arrived safely at Quebec on the 23rd, and completed there her cargo and crew. She left Quebec on the night of the 24th, and on the morning of the 25th, when she had arrived opposite the Island of Barnaby, having then been about six hours in salt water, it was discovered that there was a leak in the boiler, the water damping the engine fires and the pressure of steam in the boiler falling suddenly from 70lb. to 10lb. The weather up to this time had been fair, and the voyage without accident. The cause of the leak was found to be a crack, situated in the corner of one of the fire-boxes, which had been noticed by the chief engineer previously to the

vessel leaving Montreal, but which had not leaked till the vessel got into salt water. The defect in the boiler being such as to render it unsafe to proceed on the voyage without its being repaired, she was taken to a neighbouring harbour, called River Hokee Cove, and men were sent down by her owners to do the necessary repairs.

It was several days before the repairs were executed, and the state of the tide not allowing the vessel to start immediately on their completion, it was not till after a delay of sixteen days that she again proceeded on her voyage, on the 11th December, by which time she might otherwise have reached her destination. On the evening of the same day a violent storm came on, and, her rudder breaking, the vessel was driven on shore and became a total wreck. The principal point contested between the respondents and appellants was, whether the crack in the boiler, or the inexperience of the chief engineer, rendered the ship unseaworthy at the time of her starting so as to prevent the policy attaching. Several witnesses were called to give their opinions on each point, and on the first they agreed that a vessel whose boiler had a crack in it unrepaired would be defective and unfit to go to sea; while the fact that the vessel soon after leaving port, without experiencing rough weather, or meeting with an accident, became unable to proceed, would, in itself, raise an inference that the ship was unseaworthy at starting.

The *enquêtes* having been closed, the following judgment was delivered on the 31st December, 1867:—

"The Court considered that the propeller called *The West* was seaworthy at the time of her leaving Montreal, on her voyage from thence to Halifax, and that the plaintiffs having established that the said propeller called *The West* was, in the month of December, 1864, lost from perils of the sea, adjudged and condemned the defendants to pay to the plaintiffs the sum of 6,000 dollars currency."

From this judgment the appellants appealed to the Court of Queen's Bench for the province of Quebec, Canada, and on the 19th of December, 1868, that Court

gave judgment confirming the judgment of the Superior Court.

From this judgment the present appeal was brought.

The appeal was twice argued, first on the 21st January before Lord Westbury, Sir J. Colvile, Sir J. Napier and Sir R. Phillimore, when their Lordships took time to consider their judgment and afterwards expressed their desire that the appeal should be re-argued.

*Sir J. Karlslake* and *Mr. Bompas*, for the appellants.—The law which is to be applied to this case is the English law. That is not disputed. *The West* was unseaworthy at the time she left Montreal, or at all events at the time she left Quebec, and at the time she entered salt water. It is therefore a case of breach of warranty of seaworthiness at the commencement of the voyage. The fact that the vessel was repaired after the voyage was commenced, even if it was before any loss had occurred in consequence of the defects, is immaterial. It is said that the implied warranty of seaworthiness is excluded by the express stipulation as to seaworthiness contained in the policy. It is also said that the whole frame of the policy shews it to have been the intention of the contracting parties that the policy should only extend to risks of rivers and lakes, but the policy expressly assures the vessel from Montreal to Halifax. The express provision as to seaworthiness is not intended to apply to the commencement of the voyage but to the whole duration of the voyage. There are no doubt different degrees of seaworthiness for different voyages, but a vessel must be seaworthy for the voyage at the commencement of each stage of the voyage. The American authorities do not apply. They referred to *Gibson v. Small* (1); *Dixon v. Sadler* (2); *Bouillon v. Lupton* (3); *Thompson v. Hopper* (4); *Weir v. Aberdeen* (5); *Forshaw v. Chabert* (6).

*Mr. Manisty* and *Mr. Fullarton*, for the respondents.—The law of implied war-

(1) 4 H. L. Cas. 353.

(2) 5 Mee. & W. 405; s. c. 8 Mee. & W. 895.

(3) 15 Com. B. Rep. N.S. 113.

(4) 6 E. & B. 172.

(5) 2 B. & Ald. 320.

(6) 3 Br. & B. 158.

ranty of seaworthiness at the commencement of the voyage does not apply in the construction of this policy. The policy is headed "Inland Hull Policy," and the policy by express terms limits the adventures and risks insured against to "lakes, rivers, canals, fires, and jettisons." It is clear, therefore, that this policy was only intended to cover river risks, and is, in fact, a description of policy very common in Canada, and known as a River policy. The implied warranty of seaworthiness at the commencement of the voyage is confined to sea policies; but this policy by its very provisions excludes the usual implied warranty of seaworthiness, for it provides, amongst other exceptions from liability on the part of the assured, that they shall not be liable for damage arising from rottenness, internal defects, or other unseaworthiness. The implied warranty is, therefore, excluded by this express provision—" *Expressum facit cessare tacitum*."

They referred to *Roberts v. Barker* (7); *Line v. Stephenson* (8); *Cook v. Jennings* (9); *Aspdin v. Austin* (10); *Biccard v. Shepherd* (11); *Taylor v. Lovell* (12); *The Merchants' Insurance Co. v. Clapp* (13).

LORD PENZANCE delivered the judgment of their Lordships.—This is an appeal from the Court of Queen's Bench in Canada, and the question to be determined is, whether or not the appellants, who are the underwriters upon a policy of insurance, are, in the events that have happened, liable for the loss of the vessel insured by that policy?

The policy was a policy effected upon a printed form which was intended, as appears by many of its details, to have formed a policy for river, and what may be called inland navigation; but the risk and duration of the policy, as expressed upon the face of it, were "at and from Montreal to Halifax," in Nova Scotia, and it therefore appears to their Lord-

ships to be practically a sea policy as well as a river policy.

The vessel was warranted to sail on or before the 21st of November, 1864; and within the period mentioned in the policy that vessel, *The West*, left Montreal, and proceeded down the river towards the sea. In due time she arrived at Quebec, from Quebec she pursued her voyage, and very shortly after she found herself in salt water. The boiler of the vessel, which had at the time of her starting on her voyage a defect in it, became unmanageable. The defect which originally existed was aggravated by the increased pressure arising from the vessel being in salt water; but, from whatever cause, the fact is undoubted, that the boiler, owing to the original defect, became then unmanageable. It ceased to do its work, and the vessel was obliged to put into a neighbouring place to have the defect remedied before she could proceed on her voyage. The defect was remedied, but a considerable delay occurred before the voyage was resumed. This delay was caused partly by the state of the tides, and partly by the time necessarily consumed in repairing the existing defect; but eventually she sailed again. She met with bad weather, and was lost. The question is, whether the underwriters, in these circumstances, are responsible for the loss that has occurred?

The underwriters defend themselves upon the ground that the vessel was not seaworthy for her voyage when she sailed, and they point to this defect existing in the boiler at that time, which undoubtedly asserted and established itself as a cause of unseaworthiness as soon as the vessel was in salt water. This defence the underwriters undoubtedly did put forward in very plain language, as it seems to their Lordships, upon their plea or *défense au fonds en droit*; and it may be remarked in passing, that although it has been argued that the present appellants did not intend to rely upon that defence, yet that does not seem to have been questioned in either of the Courts in Canada. That the defence was raised, and that it was properly raised, seems to have been granted by everybody, including the two learned judges who have

(7) 1 Cr. & M. 808.

(8) 5 Bing. N.C. 183.

(9) 7 Term Rep. 381.

(10) 5 Q.B. Rep. 671.

(11) 14 Mo. P.C.C. 471.

(12) 3 Mass. Rep. 330.

(13) 11 Pick. Rep. 56.

delivered their judgments in favour of the respondents in the Court below.

Now it is undoubted that the vessel, from the fact of the boiler being in the state in which it was found to be as soon as the vessel entered salt water, was not fit to encounter the seas, and for that reason, and that reason alone, she put in to repair. Well, then, can it be said that the vessel sailed in a seaworthy state? The general proposition is not denied that in voyage policies there is an implication by law of a warranty of seaworthiness, and it was not contended that the vessel was seaworthy when she found herself in salt water; but it has been suggested that there is a different degree of seaworthiness required by law, according to the different stage or portion of the voyage which the vessel successively has to pass through, and the difficulties she has to encounter; and no doubt that proposition is quite true.

The cases of *Dixon v. Saddler* (2), and the other cases which have been cited, leave it beyond doubt that there is seaworthiness for the port, seaworthiness in some cases for the river, and seaworthiness in some cases, as in a case that has been put forward of a whaling voyage, for some definite, well-recognised, and distinctly separate stage of the voyage. This principle has been sanctioned by various decisions; but it has been equally well decided that the vessel, in cases where these several distinct stages of navigation involve the necessity of a different equipment or state of seaworthiness, must be properly equipped, and in all respects seaworthy for each of these stages of the voyage respectively at the time when she enters upon each stage, otherwise the warranty of seaworthiness is not complied with.

It was argued that the obligation thus cast upon the assured to procure and provide a proper condition and equipment of the vessel to encounter the perils of each stage of the voyage, necessarily involves the idea that between one stage of the voyage and another he should be allowed an opportunity to find and provide that further equipment which the subsequent stage of the voyage requires; and no doubt that is so. But that equipment must, if the warranty of seaworthiness

is to be complied with, be furnished before the vessel enters upon that subsequent stage of her voyage which is supposed to require it.

Now, in this case, supposing there were any such subsequent stage as has been argued, and that there were any such necessity for a different equipment at one period of the voyage than that which existed at another, which is by no means plain, can it be said, that at the commencement of that portion of her voyage which was to be made in salt water, the vessel was fit to encounter the perils of it, or, in other words, was seaworthy?

It is plain that this could not be asserted with truth, because from the moment she entered the salt water, the defect became apparent, and she was actually disabled by the action of the salt water upon the defective boiler.

It seems, therefore, to their Lordships, that the warranty of seaworthiness has not been complied with.

Two grounds have been taken by the respondents as reasons why the underwriters should, nevertheless, be held responsible. The first and main ground is one which it may be said, in passing, received no attention whatever either from the counsel or from the Courts in Canada, namely, that in this particular policy there is no warranty of seaworthiness to be implied. It is said that the language of this policy is such, that the Court ought not to imply therefrom the ordinary warranty of seaworthiness. No doubt it is competent to parties by language in a contract to which, as an ordinary rule, the law attaches some implied condition, by express, pertinent, and apposite language to exclude that condition, and the question in this case is, whether the parties have done so? This, like all other questions of contract, is a question of the intention of the parties. The law by which the warranty of seaworthiness is attached to the contract is a law known to the parties who make contracts of this description; and, therefore, they are prepared to understand that the implied warranty will be attached to the contract they are about to make. If, therefore, there is an intention to exclude that implied warranty, it ought to be expressed

in plain language; but, upon looking at the language which it is argued has that effect in this case, there seems to their Lordships to be no reason whatever for saying that it was intended to have any such result. The enumeration of losses for which the underwriter here declares that he will not be responsible, is one that may properly have been introduced for either one of two reasons: first of all, the underwriter may have thought it right to say that, should a loss occur which he attributes to the condition of the ship, he will not be placed in the position of being obliged to satisfy a Court or a jury that that loss was brought about by the vessel being deficient in seaworthiness at the time when she sailed. He may wish to protect himself by stipulating, that when any loss is attempted to be brought home to him, he shall be at liberty to investigate at once the immediate cause of that loss (quite irrespective of the time when the rottenness or inherent defect, or unseaworthiness arose), and be entitled to put his finger upon it, and say, "This is a loss that has not arisen by the pressure of the elements, but one which has in fact arisen from rottenness or inherent defect."

There is another reason why he may wish to have this enumeration included in the policy without intending to disturb the well-known warranty that attaches to all policies of this character; it is this—the warranty of seaworthiness would only protect him in case the defect exists at the time the vessel sails on her voyage, but the language of the enumeration is quite wide enough to protect the underwriters from losses of a similar character, although it is proved to demonstration that they did not arise till after the vessel sailed. This enumeration of excepted losses, therefore, very largely enhances the protection of the underwriters; and it is impossible to read this enumeration without seeing that the underwriters were bent on being specially protected by the terms of this policy. And if it be said that the enumeration of excepted losses superseded the need of the warranty, as all losses arising from unseaworthiness, whether existing before or after the commencement of the voyage,

are thereby excepted, the answer is obvious—that the warranty, if broken, exempts the underwriters from loss by fire or pirates, or any other danger, though in no way referable to the unseaworthiness itself. It would seem, therefore, an odd conclusion to come to, to say that, where the underwriters were bent upon special protection and exemption, they should have intended to surrender the warranty of seaworthiness, which, after all, is the main protection to their interests.

It seems to their Lordships, therefore, that there is no pretence for saying that the language here used is such that the Court ought to conclude from it that the underwriters intended to part with the protection which the law otherwise would have accorded.

The second ground taken by the respondents is founded upon the language attributed to a great authority (Lord Tenterden) in the case of *Weir v. Aberdeen* (5), to the effect that if a defect, though it exists at the time the vessel sailed, and exists to such an extent and is of such a character as to render the vessel unseaworthy, be remedied before any loss arises, the underwriters still remain responsible. This is a proposition of perilous latitude. It is impossible not to see that such a doctrine would tend, if carried to its legitimate consequences, to fritter away the value of this warranty altogether. It is all very well to talk of trivial and small things, but it is very difficult to define what should fall within the category of small or trivial things, and what should exceed it. It may, however, be safely observed, without going more narrowly into that subject, that the case of *Weir v. Aberdeen* (5) did not proceed upon the language that is attributed to Lord Tenterden—whether he was fully and rightly reported or not—but the judgment proceeded, as it appears to their Lordships, distinctly upon the principle that the underwriters had been aware of the unseaworthiness, and had assented to the vessel putting back to the port to cure herself of the defect, and, therefore, they were held responsible. They had assented in writing on the policy to maintain their liability, notwithstanding the violation of the war-

ranty. If the statements attributed to the Chief Justice were to be held to be the ground of decision in that case, the case itself would come in direct conflict with many other cases, and especially the case of *Fordshaw v. Chabert* (6), in which a defect existed at the time the vessel sailed, was completely remedied at Jamaica, the port into which the vessel put for that purpose, and after the defect was completely remedied, the vessel was lost on the voyage from Jamaica to Liverpool; and yet the underwriters were held not responsible.

For these reasons their Lordships think that they ought humbly to advise Her Majesty to reverse this decision of the Court of Queen's Bench in Canada, and their Lordships think that the reversal ought to be with costs. The judgment of the Court of Appeal in Canada appears to have given the costs in both Courts to the present respondents. Their Lordships think that this portion also of the judgment ought to be reversed, and that the costs of both Courts in Canada, as well as the costs of this appeal, ought to be paid by the present respondents.

Attorneys—Bischoff, Bompas & Bischoff, for appellants; Roberts & Simpson, for respondents.

1870. } REGINA, *appellant*;  
July 7. } ALLAN MACPHERSON, *respondent*.\*

*New South Wales—Criminal Information—Assault—House of Assembly, Contempt of—Imputation of—Demurrer.*

An information by the Attorney-General of New South Wales charged "That on the 26th of February, 1868, at Sydney, in the said colony, while the Legislative Assembly of the said colony was sitting, a member of the said Assembly, whose conduct had been, and was then, under its consideration, after having been heard in his place in the said Assembly in reference to such conduct, was, in accordance with the practice of the said Assembly, requested by the Speaker thereof to withdraw therefrom, and that the said

member, in obedience to the said request, thereupon withdrew from the said Assembly, and that immediately on his so withdrawing, the respondent being a member of the said Assembly, in and upon the said member did make an assault, and him (the member) did then beat, wound, and ill-treat, in contempt of the said Assembly, in violation of its dignity, and to the great obstruction of its business:"—Held, on demurrer, that the information charged in proper terms a common assault. That the words, "in contempt of, etc.," did not constitute a separate charge, or derogate from the charge of assault.

This was an appeal from a judgment of the Supreme Court of New South Wales, given in favour of the respondent on a demurrer to an information filed by the Attorney-General of that colony.

On the 17th of March, 1868, an information was filed in the Supreme Court of New South Wales by Her Majesty's Attorney-General for the said colony, charging the respondent—"For that on the 26th of February, 1868, at Sydney, in the said colony, while the Legislative Assembly of the said colony was sitting, Benjamin Lee, a member of the said Assembly, whose conduct had been and then was under its consideration, after being heard in his place in the said Assembly in reference to such conduct, was, in accordance with the practice of the said Assembly, requested by the Speaker thereof to withdraw. And that the said Benjamin Lee, in obedience to the said request, thereupon withdrew from the said Assembly into an ante-chamber adjoining thereto, and that immediately upon his so withdrawing into the said ante-chamber, the said Allan Macpherson, a member of the said Assembly, in and upon the said Benjamin Lee did make an assault, and him, the said Benjamin Lee, did then beat, wound, and ill-treat, in contempt of the said Assembly, in violation of its dignity, and to the great obstruction of its business."

On the 11th of May the said Allan Macpherson appeared before the Court at Darlinghurst, and filed a demurrer to this information, and a joinder in demurrer was filed by the Attorney-General.

\* Present, Lord Cairns, Sir William Erle, Sir J. W. Colville.

The demurrer was argued before the Court at Darlinghurst, on the 13th of May, 1868, before two of the judges of the Supreme Court of the colony; and on the 18th of the same month the said judges delivered judgment, one of the judges deciding in favour of the respondent; the other judge decided in favour of the Crown.

On the 5th of June, 1868, the demurrer came on to be heard in the Supreme Court before the Chief Justice, and Mr. Justice Hargrave and Mr. Justice Cheeke.

On the 8th of June, 1868, the Supreme Court gave judgment for the respondent, Sir Alfred Stephen, Chief Justice, holding that the appellant was entitled to judgment, but Mr. Justice Hargrave and Mr. Justice Cheeke held that the demurrer ought to be allowed.

The Chief Justice delivered the following judgment:—"This is an information filed, *ex officio*, by the Attorney-General, charging the defendant with the commission—under special circumstances—of (real or supposed) aggravation of an assault and battery. It states in substance, by way of prefatory averment, that while the Legislative Assembly of this colony was sitting, one Benjamin Lee, a member, in obedience to a request from the Speaker, withdrew therefrom into an adjoining ante-chamber, and that immediately on such withdrawal, the defendant, he being also a member, committed the assault in question on the said Benjamin Lee. The information then proceeds to allege that the act was in "contempt of the Assembly, in violation of its dignity, and to the great obstruction of its business."

Here, then, whatever may have been the intention of the draftsman, and whether we regard the prefatory matter or that which follows the statement of the assault (one or both) as material to and incorporated with that statement, or as surplusage and matter wholly irrelevant, is a clear and distinct charge of an indictable offence—that of an assault and battery, committed by one man upon another, without apparent justification. This charge is couched in apt terms, with its ordinary technical allegation that the defendant assaulted, beat, wounded, and ill-treated his adversary. Such an offence

is necessarily against the public peace, or, in legal language, against the peace of the Queen. The addition or the omission of those words is confessedly of no moment. Their formal insertion could not affect in any degree the character or legal quality of the assault, and since the passing of the 16 Vict. No. 18, s. 24, their omission (which is in accordance with the usual modern course) is absolutely immaterial. So that the proposition maintained by the defendant's demurrer, as I understand it, amounts in effect to this: that the assault and battery committed by him, thus charged, is not punishable on this information, because, although essentially against the peace, it is here charged only as having been in contempt of the Legislative Assembly, and a serious obstruction to its business.

In other words, the question raised by him is, whether an assault is the less punishable by law because it not only was a breach of the peace, but also a contempt (whatever those words may mean) of the local Legislature. Or, putting that allegation aside, whether beating a man ceases to be against the peace, or to be an offence cognisable by this Court, because it not merely injured the individual named (as the information clearly implies), but at the same time obstructed the legislative business of the country.

It may be that the information was thus framed for the purpose of inducing the Court, if possible, to regard the assault as an offence solely because of that alleged obstruction, or of the supposed contempt and violation of dignity charged.

Let us assume this to have been the case, and, for the sake of argument, that the act of beating is not shown on this information to have been either a contempt, a violation of anyone's dignity, or an obstruction of legislative business. Or, let it be assumed that no such contempt, violation, or obstruction, however adequately charged, is itself an indictable offence. The conclusion appears to me to be the same—that the failure of the second portion of the indictment, from whatever cause, will not affect the validity of the first. It cannot relieve the defendant, for the charge of assault, existing unmistakably on the record, remains, and



the Court, whatever the design of the pleader, must take cognizance of that charge.

The objection, therefore, that no offence against the Assembly has been shewn, or could be punished by indictment if shewn, fails (as it seems to me) to sustain the demurrer. The imputed offence of beating is not answered by showing that immaterial or idle allegations follow, such as that the individual beaten was a senator, or that the act of beating was a contempt, or obstruction of senatorial business. If, except simply as matters of aggravation, those allegations are wholly immaterial, which they clearly are if they disclose no offence, the Court may, on a well-known principle, reject them.

We have next to consider whether the allegations in question are or not in this sense immaterial—in other words, whether a distinct offence cognizable by law is disclosed by them. And if there be, another question may arise—whether the information is or not then bad for duplicity; for, by the rules of pleading, two different offences (if at least both be well laid—See 1 Com. B. Rep. 854) cannot be included in the same count.

I am of opinion that there is no second offence charged in this information. It imputes to the defendant an assault, an offence, as already observed, aptly and technically described and well-known to the law. All that precedes and that follows is, in legal effect, matter of aggravation and detail only, showing the circumstances which accompanied, not those which constitute, the offence. As, therefore, they form no legal ingredient in the charge, their insertion was unnecessary; and for the same reason that they added nothing to the essence of the crime, the words which tend to aggravate its character were superfluous. But this no more vitiates the indictment than the allegation in the *Earl of Thanet's case* (1) affected the charge of riot there, that the defendants thereby not only disturbed the public peace, but also committed a contempt of the Court and obstructed the course of justice.

In the view which I thus take of the

case, it becomes unnecessary to express an opinion on the question raised whether it is or not an indictable offence contemptuously or by unauthorised means to obstruct the House of Assembly (and if so, equally the Legislative Council) in the performance of its duties. It would be difficult to define such an offence; for what will amount to an obstruction, especially by a member of the House, cognizable by the criminal law? There may be things said, as well as acts done, in either Chamber, unsanctioned by any rules of debate and largely obstructive of legislative business, which nevertheless ought to be enquired into by no other tribunal. On the other hand, as neither House can punish offenders in any case, I should be sorry to let it be supposed that every obstruction, however gross, by deed or words, to the performance of their high functions, provided only that it amounts neither to riot nor assault or libel, has therefore an absolute immunity from prosecution elsewhere. And if contemptuous expressions or offensive conduct towards a justice of the peace while in the discharge of his duty, operating in effect as an obstruction to its due performance, be indictable at law, as this Court held it to be in *Ex parte Cory* (2) (see also the authorities referred to by Mr. Justice Wise in *Ex parte Carrol* (3)), it would seem strange to hold that a similar obstruction to the business of the Assembly or Council, sitting in the exercise of legislative powers, is not equally so punishable.

In *Aldridge v. Haines* (4), it is distinctly said, by Lord Tenterden and Mr. Justice Parke, that abusive words spoken to the Commissioners of a Small Debt Court might be charged as an obstruction to their proceedings. A like observation is made by the latter learned Judge in the Exchequer, as to an abusive letter sent to a magistrate—*The King v. Faulkner* (5). The case of *The King v. How* (6), which is an instance of a prosecution for obstructing a magistrate by words spoken,

(2) 3 S. C. R. 309.

(3) 1 S. C. R. 311.

(4) 2 B. & Ad. 395.

(5) 2 Cr. M. & R. 525.

(6) 2 Str. 609.

(1) 27 St. Tri. 827.

appears to me an authority to the same effect. So is the expression of Lord Denman in his Judgment in the *Duke of Marlborough's case* (7). In *The King v. Smith* (8), it is held to be an indictable offence at law to obstruct any person in the exercise of powers conferred on him by statute. And (on that principle, I presume) in *Kielley v. Carson* (9), the Privy Council in their considered judgment, denying the power of a Colonial Legislative Body to commit for a contempt, assume, apparently as a matter of course, that "contemptuous insults and expressions" are punishable by the ordinary tribunals. If this be not understood as referring to libels only, it will of course include the case supposed—that is to say, of obstruction by insults, or any contemptuous expressions, offered or used to the Legislative Body.

The case of any such obstruction (or of obstructing by some act or acts done) where the offender is himself a member of the House, it must be admitted, presents more difficulty than that of a stranger so offending. And if, as is intimated in *Doyle v. Falconer* (10), legislative bodies have power to expel a member for misconduct of this kind, there seems little reason for resorting to a court of law. But, on the whole, I see no sufficient reason for holding that the obstruction, if punishable in the one case, is not equally so in the other. Be this how it may, I am of opinion that in every indictment or information for the offence, not only must the obstruction be specifically charged as such, but the act, words, or other matter meant to be insisted on as constituting it, must (according to the general rule) be stated with reasonable particularity. The Court must be enabled to see, moreover, on the face of the information, that an interruption of the business and duties of the House really was occasioned, directly or indirectly, by the means stated; and that those means were unlawful, in the sense, at least, of their being unjustifiable in the person using them.

(7) 5 Q.B. Rep. 955.

(8) 2 Dougl. 445.

(9) 4 Moore, 63.

(10) 4 Moore P.C. (n.s.) 203; s. c. 36 Law J. Rep. (n.s.) P.C. 33.

As this case now stands, my conclusion is that the demurrer ought to be overruled; and that the defendant, unless permitted, as an indulgence, to plead in denial of the charge, should receive the judgment of this Court for the assault with which he stands charged, the same being confessed by his demurrer, with the matters charged in aggravation of that offence.

*Sir R. Palmer and Mr. Cohen*, for the Crown.—The information sufficiently charged a common assault. The charge contains the ordinary technical allegations, setting out a charge of assault and battery. That part of the information which imputes a contempt of the Legislative Assembly may be rejected as surplusage. Such a charge would in itself constitute no offence. The information is not bad on the ground of duplicity. But if it is said that the charge of a common assault is not well laid, the facts alleged amount to a misdemeanour at common law in the obstructing the business of the House of Assembly. The failure of the latter part of the charge will not affect the validity of the earlier part of the charge. All the allegations which precede and follow the charge of assault are mere aggravation. They referred to the *Earl of Thanet's case* (1), *The King v. Hunt* (11), and *Taylor on Evidence*, 4 Ed. 245, 247.

The respondent did not appear.

LORD CAIRNS delivered the judgment of their Lordships.—In this case, their Lordships are of opinion that the appeal ought to be allowed, that the judgment which has been entered in the Colony for the defendant should be reversed, and that the demurrer of the defendant should be overruled, and their Lordships will humbly report to Her Majesty to this effect. Beyond that their Lordships do not proceed. They leave it to the Attorney-General to take such steps as he may think fit, if he should desire to take further steps with reference to the judgment in the Colony.

Their Lordships read the information in this case as an information which

(11) 2 Campb. 583.

states in fit and apt terms that an assault was committed by the defendant upon the person named in the information, viz., Benjamin Lee; they read it as alleging that "the defendant, in and upon the said Benjamin Lee, did make an assault, and him, the said Benjamin Lee, did then beat, wound and ill-treat;" words which, in all respects, are apt words for the purpose of describing a common assault. They find, then, that added to those words there are some further words, viz., "in contempt of the said Assembly, in violation of its dignity, and to the great obstruction of its business." Their Lordships cannot read these words as an allegation of a further or of a separate offence, but simply as the statement of a consequence resulting from that common assault which is described in the earlier words. Whether that consequence did or did not result from the common assault, whether that consequence ought or ought not to be considered as an aggravation of the common assault is, to the minds of, their Lordships, immaterial. The words do not alter the character, or the allegations with regard to the character, of the offence which is charged. They may be surplusage; but if surplusage, they do not in any way injure or take away from the effect of the earlier averments. Their Lordships are perfectly satisfied with the reasons upon this head which have been given by the Chief Justice in the Colony. They desire to express their concurrence with those reasons; and it is upon those grounds their Lordships have arrived at the conclusion which has been already intimated.

---

Attorneys — Oliversons, Denby & Peachey, for appellant.

---

1870. } RAYNES WAITE SMITH, *appellant*,  
 July 5. } v. JANE GEORGIANA O'GRADY  
 AND OTHERS, *respondents*.\*

*Jamaica—Real Estate—Personal Estate  
 —Executor—Claim for an Account—  
 Laches.*

*A testator bequeathed all his real and personal estate in Jamaica, after payment of debts and legacies, to the respondents, his grandchildren, to be apportioned when they should attain the age of twenty-one years, and appointed D. R. executor of his will and guardian in respect of the real estate. The testator died in 1832, and D. R. entered into possession of the real and personal estate. D. R. died in 1850, and appointed the appellant his executor. The respondents attained the age of twenty-one years in 1865, and in that year the appellant filed a petition praying that an account might be taken of the real and personal estate of the testator:—Held, that the appellant was entitled, notwithstanding the delay, as a matter of right to have an account taken of the personal estate of the testator, and inasmuch as D. R. had been appointed guardian in respect of the real estate, and had entered into possession of the same, accounts should also be taken of the rents and profits of the real estate of the testator.*

This was an appeal from a decree of the Vice Chancellor of Jamaica, dated the 2nd of May, 1868, whereby a suit, instituted by the appellant, as executor of Duncan Robertson, the surviving executor and trustee of the will of John Chambers, for the administration of the real and personal estate of the latter, was dismissed.

The circumstances under which the appeal arose were as follows:—

The said John Chambers, at the time of making his will and of his death, was seised in fee simple of certain real estate in Jamaica. By his will, dated the 30th of September, 1831, he bequeathed certain legacies, and devised and bequeathed all the residue of his estate, subject to the payment of the said legacies, to his grandchildren, the respondents, in fee, as tenants in common, to be appor-

\* Present, Lord Cairns, Sir J. W. Colville, and Sir R. Phillimore.

tioned to them when and as they should, respectively, attain the age of twenty-one years. The said John Chambers appointed, amongst other persons, one Duncan Robertson, executor of his said will.

The testator, Chambers, died on the 1st of December, 1832, leaving the respondents surviving, and the said Duncan Robertson proved the said will.

Upon the decease of the testator the said Duncan Robertson entered upon and took possession of the real and personal estate of the said testator in Jamaica, and applied the rents and profits and produce of the real estate, and such of the personal estate as came to his hands, so far as the same extended, in payment of the testator's debts and legacies.

The said Duncan Robertson died on the 9th of May, 1850, and appointed the appellant executor.

On the 8th of May, 1865, the appellant, as his executor, filed a petition in Jamaica against the respondents, stating the facts of the case, and alleging that there was a debt due by the estate of Chambers to the estate of Robertson amounting to the sum of 1,648*l.* 11*s.* 10*d.* or thereabouts, exclusive of interest; and praying for an administration decree of the real and personal estate of John Chambers, and for a sale of the real estate, and for payment of debts and costs.

On the 1st of November, 1867, the respondents filed their affidavit in answer to the said petition, admitting that the real and personal estate of the testator, Chambers, had been administered by Robertson, but stating that in various respects the estate had not been correctly administered nor accounted for; that, if the accounts were properly taken, a large amount would be due by Robertson's estate to the respondents, and setting up, as a defence to the appellant's claim, that the cause of action did not accrue within six years before the filing of the petition.

On the 2nd of May, 1868, the petition was heard before the Vice Chancellor of Jamaica, and by a decree made therein on the 2nd of May, 1868, the cause petition was dismissed.

From this decree the present appeal was brought.

*Sir Roundell Palmer, Mr. Mackeson and*

*Mr. Cooper*, for the appellant.—Duncan Robertson was the executor and trustee under the will of the testator, Chambers, and there are open and unsettled accounts between their respective estates. The Statute of Limitations does not apply. Every executor, or trustee, or representative of an executor or trustee has a right to have the trust accounts taken under the decree of the Court so long as the estate remains, as in this case, unwound up and not fully administered. The parties beneficially entitled under the will of the testator, Chambers, are entitled to call upon the appellant, as the executor of their testator's executor and trustee, for an account, and therefore the appellant, as such executor, is entitled to discharge his testator's estate under the decree of the Court. The appellant had a right to file a bill for an account both in respect of the real and personal estate of the testator, and he is entitled to have such accounts, unless there have been laches. It is not contended that there have been laches. There is an outstanding estate, and a balance is still due. The estate is unsettled. All the appellant asks for is the common administration decree. The case on both sides is that the real estate is in question. Robertson was appointed by the will guardian in respect of real estate. All the proceedings in the Court below have been on the assumption that Robertson was in legal possession.

[*LORD CAIRNS*.—Do you contend that the appellant has a charge on the real estate?]

We wish to keep that question open, and to have an enquiry whether the real estate is chargeable. By the law of the colony the executor can charge the real estate for management. The judgment of the Court below proceeds upon this assumption.

*Mr. Shapter and Mr. Tripp*, for the respondents.—No case is shewn by the petition which entitles the appellant to the relief sought against the respondents, or to any relief which may affect them personally or charge the real estate vested in them and the other devisees. The evidence shews that not only all the debts of Chambers, but all his legacies were paid out of his assets. The claim, if any,

of Duncan Robertson, or of the appellant, as representing him, is for advances or expenditure in relation to his possession of the real estate of Chambers. Duncan Robertson was not justified in incurring any liability in respect thereof, so as to affect or charge the respondents or their interests in the real estate. The accounts of Duncan Robertson were all closed, and he never set up any claim in respect thereof in his lifetime. If Duncan Robertson ever had any claim, the remedy in respect thereof was barred by the Statutes of Limitations by the length of time which has elapsed. This suit was not an ordinary administration suit. The object of the cause petition was to have an account of the real estate, and to create a charge on the real estate in respect of a debt due to Robertson. The petition in the Court below alleges the payment of debts and legacies out of assets. There was no charge on the real estate by Chambers. Duncan Robertson was not guardian of the real estate. A grandfather cannot appoint a guardian. Robertson was only a bailiff, having the management of the real estate. There was only an equity in the corner of the bill. That cannot prevail. The equity is merely incidental to the prayer of this petition. If a decree be made for accounts, what accounts are to be rendered? They referred to *Sleight v. Lawson* (1); *Curling v. Austin* (2); 3 & 4 Will. 4. c. 27; 6 Vict. c. 56.

LORD CAIRNS delivered the judgment of their Lordships:—

Their Lordships entirely concur with the learned Judge of the Court below, that this is a suit brought after very great, and perhaps censurable delay, that if it were a question of indulgence it is entitled to no indulgence, and that the rights of the plaintiff, and the relief which is to be given to him, ought to be carefully scrutinized, so that that which he is entitled to, and only that, should, under the circumstances of the case, be granted. But having said this, their Lordships are not prepared to assent to the view taken by the learned

Judge in the Court below, that an executor, coming even after the delay which has taken place in the present case, and asking to have those accounts taken in which he has been the receiving party, is to be deprived of his right to have those accounts taken, and of having it ascertained, once for all, what his liability as an accounting party is, merely from the lapse of time that has taken place.

So far, therefore, as the personal estate is concerned, and as the position of the appellant, as executor, or executor of an executor, is concerned, their Lordships think that, notwithstanding the delay, the appellant is entitled, as a matter of right, to have the account of the personal estate of the testator taken, and to have it ascertained whether upon those accounts he is a debtor or a creditor of the estate. Their Lordships think that to be the right of the executor upon the statements made in his own complaint, and not denied; but they think that right is strongly fortified in the present case by the fact that the residuary legatees, the persons with whom he is to be in account, themselves admit and assert that his accounts have never been settled; and further, that if they were properly taken, a sum would be found due from him to them. So much as regards the personal estate.

As regards the real estate, their Lordships are of opinion, that it being asserted and sworn to on the part of the appellant that Robertson, who was the executor under the will, and who appears to have been mentioned as a guardian of the infants in respect to the devised property, although a legal guardian, he could not be made by will; and it being stated that he had entered into possession of the real estate, and received the rents and profits of it, and this not being controverted by the defendants, but on the contrary, being insisted upon by them, and it being stated by them that he is accountable in respect to those receipts, their Lordships are of opinion that the accounts should extend to the receipts of rents and profits in respect of the real estate, and to the dealings of Robertson in respect to the real estate, for the purpose of ascertaining whether upon that account also any sum is due from or to Robertson or the appellant.

K

(1) 3 Kay & J. 292; s. c. 26 Law J. Rep. (N.S.) Chanc. 553.

(2) 2 Dr. & S. 129.

NEW SERIES, 39.—PRIV. COUN.

Their Lordships observe that the petition seeks to raise the question whether Robertson or the appellant is not entitled to a charge upon the real estate in respect of any sum that may upon one or both of these accounts be found due to him. Their Lordships do not consider that they are in a position to decide that question. The will may have been referred to in the proceedings in the Court below; it has not been formally placed before their Lordships. But in addition to that, their Lordships consider that that is a question which may be affected by the law of the island; and they do not find that this point has been taken notice of specifically by the learned Judge from whose decision the appeal proceeds.

Their Lordships will, therefore, humbly recommend to Her Majesty that in place of the Order dismissing the suit in the Court below, there ought to be an account of the personal estate of the testator received by Robertson or the appellant, and of their application thereof, and whether any and what sum is due to or from the appellant as executor of Robertson in respect thereof, and also an account of the rents and profits of the real estate of the testator received by Robertson or the appellant, and of their application thereof; and of the dealings of Robertson in respect of the real estate, and whether any and what sum is due to or from the appellant as executor of Robertson in respect thereof. Their Lordships think that there should be an enquiry whether any debts or legacies are unpaid, in place of the ordinary general account of debts and legacies, and whether any personal estate is outstanding. They propose, then, to reserve further consideration and costs in the Court below, and in particular the question whether the appellant, as executor of Robertson, is entitled to any lien on the real estate in respect of any sum which may be found due in respect of the dealings with the real estate. And their Lordships will order that the costs of the appellant and of the respondents in this appeal should be made costs in the cause in the Court below. Perhaps it is better to mention—it will indeed be observed from what I have said—that their Lordships desire the account to be taken in the form which

I have stated, and they do not propose that the recorded accounts should be taken as settled accounts in any way between the parties.

Attorneys—G. S. Airey, for appellant; Valpy & Chaplin, for respondents.

1869. { JOHN MARTIN, *appellant*, v. THE  
Dec. 24. { REV. ALEXANDER HERIOT MAC-  
KONCHIE, *respondent*.

*Judicial Committee—Monition—Disobedience to—Holy Communion—Elevation of Cup and Paten—Kneeling or Prostration.*

*On appeal from the Arches Court in a proceeding under the Church Discipline Act, the respondent, a clerk in orders, was monitioned to abstain from the elevation of the cup and paten, during the administration of the Holy Communion, and from kneeling or prostrating himself before the consecrated elements during the prayer of consecration.*

*On a motion to enforce obedience to such monition, it appeared that the sentence of the Arches Court, which was affirmed by the Judicial Committee, monitioned the respondent not to elevate the elements "above the head of the respondent," and that the respondent had literally obeyed that monition. But their Lordships intimated, that any elevation as distinguished from the mere act of removing the elements from the table, and taking them into the hands of the minister, is not sanctioned by law.*

*It further appeared, that the respondent bowed one knee at certain parts of the prayer of consecration, to an extent that it, occasionally, touched the ground:—Held, that such a bowing of the knee was a breach of the monition, and that it is not necessary that a person should touch the ground, in order to perform an act of reverence.*

[For the report of the above case, see 39 Law J. Rep. (N.S.) Eccles. p. 11.]

1870. { CHARLES BARRON AND ANOTHER,  
June 20. { appellants; GEORGE CHARLES  
STEWART, respondent.  
"THE PANAMA."

Admiralty—Bottomry—Owner—Notice  
—Insolvency—Adjudication—Assignee.

In no case can notice of the intention to raise money by bottomry be dispensed with. Until an owner has been judicially declared insolvent, he is entitled to notice. If an owner has been judicially declared insolvent, the assignees are entitled to notice.

[For the report of the above case, see 39 Law J. Rep. (N.S.) Adm. p. 37.]

1869. { THE GENERAL STEAM NAVIGATION  
Dec. 6. { COMPANY, appellants, v. THOMAS  
HEDLEY AND OTHERS, respon-  
dents.  
"THE VELOCITY."

Admiralty — Collision — Sailing Rules,  
No. 14—Construction—Ships crossing,

Rule 14 of the sailing and steering rules provides that "If two ships under steam are crossing, so as to involve risk of collision, the ship which has the other on her own star-board side, shall keep out of the way of the other." The appellants' ship, in proceeding down a river, and intending to keep her course; in order to round a bend in the river, had her head slightly inclined so as to exhibit her masthead and portlight only to the respondents' ship, which was proceeding up the river:—Held (reversing the judgment of the Admiralty Court), that the vessels were not crossing within the meaning of the above rule. That the fact that the portlight only of the appellants' ship was seen by the respondents was not conclusive evidence that the vessels were crossing; that the relative position of the vessels was not only to be regarded but also the place in which the vessels were situated.

[For the report of the above case, see 39 Law J. Rep. (N.S.) Adm. p. 20.]

1870. { THE QUEEN, appellant;  
June 27, 28. { JAMES CARLIN, respondent.  
"THE SALVADOR."

Admiralty—Foreign Enlistment Act (59 Geo. 3. c. 69. s. 7)—Construction.

The Foreign Enlistment Act (59 Geo. 3. c. 69. s. 7) provides that if any person shall, without the leave, equip, furnish, or fit out "any ship or vessel with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, as a transport, &c., every such person shall be guilty of a misdemeanour, and every such ship shall be forfeited." The respondent's ship was fitted out as a transport for the service of certain persons in the island of Cuba, who had revolted from Spain, and had assumed to exercise government, and were conducting hostilities against Spain. It did not appear who the persons were, or over what part of Cuba they assumed to exercise government:—Held, that inasmuch as the persons in whose service the ship was employed assumed to exercise the government, there was a breach of the provisions of the Act, and the respondent's ship was liable to forfeiture.

[For the report of the above case, see 39 Law J. Rep. (N.S.) Adm. p. 33.]

1870. { CHARLES JAMES ELPHINSTONE,  
July 4, { appellant,  
14. { THE REV. JOHN PURCHAS, CLERK,  
respondent.

Ecclesiastical Law—Practice—Church Discipline Act (3 & 4 Vict. c. 86)—Promoter, Death of.

In a proceeding under the Church Discipline Act at the suit of a promoter, judgment was given in the Archdeacon's Court, and the promoter appealed to Her Majesty in Council. After the appeal was filed and before hearing, the promoter died. On motion to substitute a parishioner in the place of the original promoter:—Held, that it is the duty of the Court before which pro-

*ceedings are pending, when a promoter dies, to allow a proper promoter to be substituted in the place of the original promoter.*

[For the report of the above case, see 39 *Law J. Rep.* (n.s.) *Eccles.* p. 124.]

1870.  
Mar. 26.

THOMAS BYARD SHEPPARD, ap-  
pellant; THE REV. WILLIAM  
JAMES EARLY BENNETT, re-  
spondent.

*Church Discipline Act* (3 & 4 *Vict. c.* 86)—*Commission—Letters of Request—Citation—Articles—Sufficiency of.*

In a proceeding under the *Church Discipline Act* against a clerk in orders for maintaining doctrine alleged to be heretical, the commission was to inquire as to certain works of the accused of which the titles and certain passages were given. The letters of request and the citation referred to the same works and passages. No charge was preferred before the Commissioners, or alleged in the letters of request or citation, in respect of the 29th Article of Religion; but the articles contained additional passages from the said works, and a charge (amongst others) of impugning the 29th Article of Religion:—Held, that the Commission is

a mere preliminary step for the purpose of advising the bishop whether there is a *prima facie* case; that the letters of request are for the purpose of founding jurisdiction in the higher Court; that the citation need only state generically the offence charged so that the accused may know the nature of the offence he is called upon to answer; and that the citation was sufficient to enable the promoter to introduce into the articles the additional passages and charge of impugning the 29th Article of Religion.

In support of a charge of heresy, articles filed in the Arches Court set out passages from the works of the accused, in which he expressed approval of the works of certain other writers alleged to contain heretical doctrine:—Held, that the articles must set forth passages from the works of the accused in which he has maintained heretical doctrine; that it is not sufficient to set out passages of works of which the accused has expressed a general approval, and which contain passages he has not by his own publication accepted in their totality.

[For the report of the above case, see 39 *Law J. Rep.* (n.s.) *Eccles.* p. 59.]



# INDEX

## TO THE REPORTS OF CASES

DECIDED BY THE

JUDICIAL COMMITTEE AND THE LORDS OF THE

## PRIVY COUNCIL.

FROM MICHAELMAS TERM, 1869, TO TRINITY TERM, 1870.

ADMIRALTY—Notice of intention to raise money by bottomry. *Barron v. Stewart—The Panama*, 67; Adm. 37

— Construction of sailing orders when ships crossing. *General Steam Navigation Co. v. Hedley—The Velocity*, 67; Adm. 20

— Foreign Enlistment Acts. Forfeiture of ship. *Regina v. Carlin—The Salvador*, 67; Adm. 33

APPEAL—*practice: facts known and brought before court below*—The Judicial Committee will not entertain an appeal upon facts which were known to the appellant at the time of hearing in the Court below, but which were not brought to the notice of the Court below.

Upon a petition for leave to appeal, it is the duty of the petitioner to state in the fullest and frankest manner all the possible circumstances of the case.

The appellant carried on business in partnership with S. & M. in London and also in Hong Kong. The firm being in difficulties, the appellant, who was in London, gave a power of attorney to S. at Hong Kong to act for him in all matters on behalf of the firm, and to take any proceedings in bankruptcy on his behalf, and on the 23rd of May, 1867, the firm was adjudicated bankrupt in the Supreme Court at Hong Kong, and the appellant was represented by counsel in the Supreme Court. In April, 1867, the appellant filed a petition in bankruptcy in England, and was adjudicated a bankrupt in England. This fact was known to the appellant's counsel, but was not brought to the notice of the Supreme Court:—*Held*, that inasmuch as the bankruptcy of the appellant in England was known and was not brought to the notice of the Court in Hong Kong, their Lordships would not entertain the fact of the bankruptcy in England on appeal. *Lyall v. Jardine*, 43

— To Court of Queen's Bench. See Lower Canada.

CANADA. See Deed, Lower Canada.

CERTIORARI. See Lower Canada.

COLONIAL LAW—*Cape of Good Hope: ordinances of Court of Policy: effect of Roman-Dutch law*—By the Roman-Dutch law, ordinances of the Governor and the Court of Policy at the Cape of Good Hope form part of the *lex scripta* of the colony. *Van Breda v. Silberbauer*, 8

A landowner in the colony petitioned the Governor and Court of Policy to be relieved from certain ordinances made in respect to the right to the flow of certain water from his land into and upon the land of certain adjoining landowners, but "offered" to permit the flow of the water, subject to certain restrictions. By an ordinance of the Governor and Court of Policy, it was resolved to release the landowner from the former ordinances, and to accept the "offer" contained in his petition:—*Held* that, inasmuch as the legislature could only modify an existing law by passing a new law, such ordinance, though informal, had the force of law, *Ibid*.

— *Cape of Good Hope: customs ordinance: construction of as to entry: penalties of goods*—Ordinance No. 6 of the Cape of Good Hope, by section 24, provides that no goods shall be laden or unladen from any ship in the colony until due entry shall have been made of such goods and warrants granted for the unloading of the same. Section 25 provides that the person entering any goods shall deliver to the collector a bill of entry thereof, containing, amongst other things, the particulars of the quality and quantity of the goods, and the packages containing the same. Section 50 provides that every

person who shall assist or be otherwise concerned in the unshipping, landing, or removal or harbouring goods liable to forfeiture, or into whose hands the same shall knowingly come, shall forfeit treble the value thereof. P. and M. carried on business in partnership at Cape Town. P. consigned 25 cases of glassware and 3 cases, each containing a carriage, and filled up with corks, to M. at Cape Town. On the arrival of the goods, M. made out one entry for 3 cases containing carriages and 25 cases of glassware. There was no entry in respect of the corks:—*Held*, first, that it is the duty of the person who applies to enter goods, for the purpose of having them unladen, to state the packages the unloading of which he asks for, and to identify those packages, and to state the particulars of the quality and quantity of the goods contained in the packages, and that the 3 cases containing the corks were forfeited. Secondly, that, inasmuch as there may be several entries on one bill of entry, the cases containing glassware were not forfeited. Thirdly, that under the circumstances, M. was liable to the penalties imposed by section 50. *Graham v. Pocock*, 38

**CRIMINAL INFORMATION—assault: contempt of House of Assembly: demurrer**—An information by the Attorney-General of New South Wales charged "That on the 26th of February, 1868, at Sydney, in the said colony, while the Legislative Assembly of the said colony was sitting, a member of the said Assembly, whose conduct had been, and was then, under its consideration, after having been heard in his place in the said Assembly in reference to such conduct, was, in accordance with the practice of the said Assembly, requested by the Speaker thereof to withdraw therefrom, and that the said member, in obedience to the said request, thereupon withdrew from the said Assembly, and that immediately on his so withdrawing, the respondent being a member of the said Assembly, in and upon the said member did make an assault, and him (the member) did then beat, wound, and ill-treat, in contempt of the said Assembly, in violation of its dignity, and to the great obstruction of its business:—*Held*, on demurrer, that the information charged in proper terms a common assault. That the words, "in contempt of, etc.," did not constitute a separate charge, or derogate from the charge of assault. *Regina v. Macpherson*, 59

**DEED—evidence of execution by certificate of notary**—In a petitory action in Lower Canada, plaintiff produced a deed of sale executed before a notary public in Upper Canada, and a certificate by such notary of the due execution of the deed. No further evidence of execution was produced:—*Held*, that the certificate of a notary public of the due execution of a deed in a colony regulated by English law does not dispense with proper evidence of execution, though the certificate is put in evidence in a colony regulated by French law, where such certificate is sufficient evidence. *Nye v. James Macdonald*, 34

**ECCLESIASTICAL LAW—Disobedience to monition.** Elevation of cup and paten. Kneeling or prostration. *Martin v. Mackonochie*, 66; *Eccles*. 11  
— Death of promotor of suit. *Elphinstone v. Purchas*, 67; *Eccles*. 124

— Sufficiency of citation and articles on letters of request. *Sheppard v. Bennett*, 68; *Eccles*. 59

**EXECUTOR—claim for an account of real estate and personal estate: laches**—Testator bequeathed all his real and personal estate in Jamaica, after payment of debts and legacies, to the respondents, his grandchildren, to be apportioned when they should attain the age of twenty-one years, and appointed D. R. executor of his will and guardian in respect of the real estate. Testator died in 1832, and D. R. entered into possession of the real and personal estate. D. R. died in 1850, and appointed the appellant his executor. The respondents attained the age of twenty-one years in 1865, and in that year the appellant filed a petition praying that an account might be taken of the real and personal estate of the testator:—*Held*, that the appellant was entitled, notwithstanding the delay, as a matter of right to have an account taken of the personal estate of the testator, and inasmuch as D. R. had been appointed guardian in respect of the real estate, and had entered into possession of the same, accounts should also be taken of the rents and profits of the real estate of the testator. *Smith v. O'Grady*, 63

— Rights of by law of Jersey. See Jersey.

**GOODS SOLD AND DELIVERED—constructive delivery: execution creditor: rights of pledgor and pledgee: delivery of pledge**—Goods shipped at Liverpool for Quebec were taken on their arrival to the examining warehouse, and were entered as consigned to "M. & S.," and were marked "M. & S." By the regulations of the warehouse, consignees were entitled to possession on payment of freight and duty. M. & S. having obtained an advance on the goods from the appellants, signed a request note directed to the officer of the warehouse, directing him to "hold the goods subject to the order of the appellants, they paying duty and storage charged before removal." The officer wrote across the note "accepted," and signed it:—*Held*, on a seizure under a *fi. fa.* by the execution creditor of "M. & S.," that by the express agreement of the parties, followed by the acceptance of the officer of the warehouse, there was a valid constructive delivery of the property in the goods to the appellants sufficient for the purposes of the pledge. *Young v. Lambert*, 21

**JERSEY—testamentary law: personal estate: rights of executors to possession**—By the law and custom of Jersey a testator who dies leaving lawful issue can only dispose of a part of his personal estate, but the executors of such testator are entitled to possession of the entirety of the personal estate until they have fulfilled the duties of the administration. *La Cloche v. La Cloche*, 25

**JURY**—*alien: de medietate linguae: peremptory challenge*—“The Juries Statute Act, 1865,” of Victoria, by sect. 37, provides that every person arraigned for any treason felony or misdemeanour shall be admitted to challenge peremptorily to the number of twenty jurors. Sect. 38 provides that on the prayer of any alien informed against for felony the sheriff shall, by command of the Court, return for one-half of the jury a competent number of aliens, if so many shall be found in the town, etc., and that no such alien shall be liable to be challenged for want of qualification, “but that every such alien may be challenged for any other cause in like manner as if he were qualified.” An information was exhibited in Melbourne against the appellant for felony. The appellant prayed to be tried by a mixed jury, and challenged peremptorily an alien, one of such jury:—*Held*, that in absence of positive provision to the contrary, an alien juror was subject to peremptory challenge, and that the appellant had a right to such challenge. *Levinger v. The Queen*, 49

**LOWER CANADA**—*Court of Queen's Bench: appeal from Superior Court: writ of certiorari: seigniorial Acts: Consolidated Statutes of Lower Canada*] By the Consolidated Statutes of Lower Canada, c. 77. s. 23, it is provided, “That an appeal shall lie to the Court of Queen's Bench as a Court of Appeal and Error from any judgment rendered by the Superior Court for Lower Canada in any district, in all cases where the matter in dispute exceeds the sum of 20*l.* sterling.” Chapter 88. s. 17, provides, “That an appeal shall lie to the Court of Queen's Bench, sitting in appeal, from all final judgments rendered by the Superior Court after the 30th day of June, 1858, in all cases provided for by that Act and chapter 89 of these Consolidated Statutes, except in cases of certiorari.” Chapter 89 provides for proceedings upon writs of prohibition, certiorari, and scire facias, and section 6 states that “appeals from final judgment rendered under the Act, except in cases of certiorari, are provided for by chapter 88.” In a proceeding under the Seigniorial Acts of Lower Canada, the appellants obtained from the Superior Court a writ of certiorari to bring the proceedings into the Superior Court, which Court afterwards quashed the writ:—*Held*, first, that the Con-

solidated Statutes must be treated as one great act, and that the several enactments ought to be construed collectively, and with reference to one another; secondly, that the writ of certiorari is governed by the provisions of chapter 88, and that no appeal will lie in such a case from the judgment of the Superior Court to the Court of Queen's Bench. *Boston v. Lelievre*, 17

— See Deed.

**MARINE INSURANCE**—*constructive total loss: notice of abandonment: insurable interest: disbursements*]—It is not necessary to use the word “abandoned” in a notice of abandonment; any equivalent expressions which inform the underwriters that it is the intention of the assured to give up to them the property insured on the ground of its having been totally lost is sufficient. *Currie & Co. v. The Bombay Native Insur. Co.*, 1

The assured must not delay to give notice of abandonment, but sufficient time must be allowed to enable the assured to exercise their judgment whether the circumstances entitle them to abandon, *Ibid*.

Advances made by the charterer to the master at the port of loading to be repaid by deductions out of freight, give the charterer an insurable interest in a policy on disbursements, *Ibid*.

The appellants chartered a vessel for a voyage, and insured the cargo against total loss. In the course of the voyage the vessel went aground, became hogged, and sustained other injuries, and surveyors recommended her to be stripped with dispatch, and steps taken to save the cargo, but no attempt was made to do so; and after several days the master, fearing bad weather, sold the vessel and cargo for the benefit of all concerned. The vessel remained for some days in the same state, and the weather proving fine, the purchasers saved a large part of the cargo:—*Held*, that the appellants were not entitled to treat the cargo as having been totally lost, *Ibid*.

**ORDINANCES**—of Court of Policy. . See Colonial Law.

**SHIPPING**. See Colonial Law. Marine Insurance.

**STATUTE**—Construction of. See Lower Canada.

**WILL**—Testamentary Powers. See Jersey.

## TABLE OF CASES.

---

Barron v. Stewart (Adm. 37), 67	Nye v. Macdonald, 34
Boston v. Lelievre, 17	Panama, The (Adm. 37), 67
Currie & Co. v. Bombay Native Insur. Co., 1	Regina v. Carlin (Adm. 33), 67
Elphinstone v. Purchas (Eccles. 124), 67	Regina v. Macpherson, 34
General Steam Navigation Company v. Hedley (Adm. 20), 67	Salvador, The (Adm. 33), 67
Graham v. Pocock, 38	Sheppard v. Bennett (Eccles. 59), 68
La Cloche v. La Cloche, 25	Smith v. O'Grady, 63
Levinger v. Regina, 49	Van Breda v. Silberbauer, 8
Lyall v. Jardine, 43	Velocity, The (Adm. 20), 67
Martin v. Mackonochie (Eccles. 11), 66	Young v. Lambert, 21

PRINTED BY SPOTTISWOODS & CO.

New-street Square; 29 Chancery Lane; 30 Parliament Street; 38 Royal Exchange.

THE  
**LAW JOURNAL REPORTS**

FOR  
THE YEAR 1870:

**CASES**  
DECIDED IN THE  
**Ecclesiastical Courts,**

REPORTED BY  
GEORGE CALLAGHAN, Esq. BARRISTER-AT-LAW;

AND ON APPEAL THEREFROM

TO THE  
**Privy Council,**

REPORTED BY  
EDWARD BULLOCK, Esq. BARRISTER-AT-LAW.

---

MICHAELMAS TERM, 1869, TO MICHAELMAS TERM, 1870.

---

ECCLESIASTICAL.  
NEW SERIES, VOL. XXXIX.

---

LONDON:

PRINTED BY SPOTTISWOODE AND CO. NEW-STREET SQUARE.

PUBLISHED BY EDWARD BRET INCE, 5, QUALITY COURT, CHANCERY LANE.

MDCCCLXX.



# CASES ARGUED AND DETERMINED

IN THE

## Ecclesiastical Courts,

AND ON APPEAL THEREFROM

TO THE

## Privy Council,

COMMENCING WITH

MICHAELMAS TERM, 33 VICTORIÆ.

[IN THE COURT OF ARCHES.]

1869. }  
Oct. 26-30. } SHEPPARD v. BENNETT.  
Nov. 19. }

*Office of Judge promoted in a Cause of Heresy—Commission under Church Discipline Act (3 & 4 Vic., c. 86)—Jurisdiction of Court—Refusal to admit additional Charge of Heresy in Articles.*

*In a proceeding under the Church Discipline Act against a clerk in holy orders, for publishing and maintaining certain heretical doctrines, a commission issued and reported that there was sufficient *prima facie* ground for further inquiry. The Bishop of the diocese in which the defendant held preferment sent the case by letters of request to the Court of Arches. The letters of request recited the proceedings before the Commissioners, and set out several extracts from works published by the defendant which in substance comprised the heretical doctrine which he was charged with maintaining, namely, "The actual presence of Our Lord in the Sacrament of the Lord's Supper; the visible presence of Our Lord upon the Altar or Table of the Holy Communion; that there is a*

NEW SERIES, 39.—ECCLES.

*sacrifice at the time of the celebration of the Eucharist; and that adoration or worship is due to the consecrated elements of the Lord's Supper."* A citation (limited to the charges set forth in the letters of request) having been served upon the defendant, the promoter brought in articles which, in addition to the charges which had been the subject of inquiry before the Commissioners, further charged the defendant with maintaining and promulgating the heretical doctrine, "that the wicked eat the Body of Christ in the use of the Lord's Supper":—Held, firstly, that the jurisdiction of the Court was founded on and limited by the charges laid before the Commissioners, and that it had no authority to deal with any charges which were not laid before them. Secondly, that the charge of maintaining the doctrine of the "reception by the wicked" was a distinct and separate charge; and as such charge had not been preferred before the Commissioners, nor specified in the letters of request or citation, the articles were ordered to be reformed by striking out all that related to it.

This was a cause or business of the office of the Judge promoted by Mr. Thomas Byard Sheppard, a member of

B

the United Church of England and Ireland, against the Rev. William James Early Bennett, a clerk in holy orders, vicar of Frome Selwood, county of Somerset, and diocese of Bath and Wells, for alleged heresy.

The case was sent in the first instance to the Court of Arches by letters of request which ran as follows:—

Robert John, Baron Auckland, by Divine permission Bishop of Bath and Wells, to the Rt. Hon. Sir Robert Joseph Phillimore, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, your surrogate or some other competent judge in this behalf, greeting. Whereas we lately received from the Rt. Hon. and Rt. Rev. Father in God, Archibald Campbell, then by Divine permission Lord Bishop of London, but now by Divine permission Lord Archbishop of Canterbury, and Primate of all England, and Metropolitan, a copy of the report of the Worshipful Sir Travers Twiss, D.C.L., the Chancellor of the diocese of London; the Venerable William Hale Hale, Clerk, M.A., Archdeacon of London, &c., &c., the Commissioners appointed in and by a certain Commission under the hand and episcopal seal of the said then Lord Bishop of London, by virtue of and in accordance with the provisions of an Act of Parliament made and passed in the session of Parliament holden in the third and fourth years of the reign of her present Majesty Queen Victoria, intituled, 'An Act for better enforcing Church Discipline;' and which said Commission did enjoin, authorise and empower the Commissioners, or any three of them, to make inquiry as to the grounds of a certain charge made by Thomas Byard Sheppard, of the parish of Frome Selwood, in the county of Somerset, and our diocese of Bath and Wells, Gentleman, a member of the United Church of England and Ireland, residing in the said parish, against the Rev. William James Early Bennett, a clerk in holy orders of the said United Church of England and Ireland, Vicar of the said parish of Frome Selwood; the said charge being that he, the said William James Early Bennett, had within the diocese of Lon-

don committed an offence against the laws ecclesiastical of this realm, by having caused to be printed and published within the said diocese certain works, in which he advisedly maintains or affirms doctrines directly contrary or repugnant to the articles and formularies of the United Church of England and Ireland, the said works being entitled respectively, "Some Results of the Tractarian Movement of 1833;" forming one of the essays contained in a volume entitled "The Church and the World," edited by the Rev. Orby Shipley, Clerk, printed and published in London in 1867; "A Plea for Toleration in the Church of England, in a Letter to the Rev. E. B. Pusey, D.D., Regius Professor of Hebrew, and Canon of Christ Church, Oxford, Second Edition," printed and published in London in the year 1867; and a "Plea for Toleration in the Church of England, in a Letter to the Rev. E. B. Pusey, D.D., Regius Professor of Hebrew, and Canon of Christ Church, Oxford, Third Edition," printed and published in London in the year 1868, and contained the following among other statements, in respect of which the said charge has been made, that is to say, in the essay entitled, "Some Results of the Tractarian Movement of 1833." (The letters then set out certain extracts from the works in question, the last, which was as follows, comprising the alleged heresies with which the defendant was charged:— "The three great doctrines on which the Catholic Church has to take her stand, are these: 1. The real objective presence of our Blessed Lord in the Eucharist; 2. The Sacrifice offered by the Priest; and 3. The Adoration due to the presence of our Blessed Lord therein." And then continued):—

And whereas it appears from the said report—That the said Commissioners did assemble by virtue of the said Commission in London House, St. James's Square, in the parish of St. James's, Westminster, in the diocese of London, on Thursday, the 5th of November, in the year of our Lord 1868, for the purpose of executing the said Commission. That all the proceedings before the said Commissioners were public. That the said Commissioners did examine witnesses on oath in reference to



the said charge, and did hear counsel on both sides (the said witnesses, or some of them, being cross-examined by counsel alleging that he appeared on behalf of the said William James Early Bennett). That the said Commissioners did then adjourn to deliberate upon the case brought before them. That after due consideration, the said Commissioners having returned into the room where the said inquiry was so publicly held as aforesaid, the said Worshipful Chancellor of the diocese of London did, on behalf of the Commissioners, openly and publicly declare the opinion of the Commissioners in the following terms:—"The Commissioners have very carefully considered the questions submitted to them under this Commission, and hereby openly and publicly declare their unanimous opinion that there is a sufficient *prima facie* ground for instituting further proceedings." And whereas the said Commissioners transmitted to the then Lord Bishop of London under their hands and seals the depositions of the said witnesses taken before them, together with the works put in evidence, and also a report of the unanimous opinion of the said Commissioners present at the said inquiry that there was sufficient *prima facie* ground for instituting further proceedings against the said William James Early Bennett for having within two years last past been guilty of offending against the laws ecclesiastical, as charged by the said Thomas Byard Sheppard. And whereas such report, together with the said depositions of the said witnesses and the works put in evidence, has been filed in the Registry of the diocese of London. And whereas, together with the copy of such report transmitted to us by the said then Lord Bishop of London as aforesaid, there has also been transmitted a copy of the said depositions in accordance with the provisions of the said Act of Parliament, intituled, "An Act for better enforcing Church Discipline." And whereas no articles have been as yet filed in the Registry of our diocese of Bath and Wells, either by us or by the said Thomas Byard Sheppard against the said William James Early Bennett in respect of the charge inquired into before the said Commissioners. And whereas we, acting under the provisions

of the said Act of Parliament, have thought fit to send the case by letters of request to the Court of Appeal of the province. Therefore, we, Robert John Baron Auckland, by Divine permission Lord Bishop of Bath and Wells, do request you the Right Honourable Sir Robert Joseph Phillimore, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, your Surrogate, or some other competent Judge in this behalf, to issue a citation or decree under seal of the said Court, citing the said William James Early Bennett to appear at a certain time and place therein to be specified, and answer to certain articles, heads, positions, or interrogatories, touching and concerning his soul's health, and the lawful correction and reformation of his manners and excesses, and more especially for having offended against the laws ecclesiastical, by having, within two years last past, caused to be printed and published within the diocese of London certain works, in which he advisedly maintains or affirms doctrine directly contrary or repugnant to the articles and formularies of the United Church of England and Ireland, the said works being entitled respectively, "Some Results of the Tractarian Movement of 1833," forming one of the essays contained in a volume entitled, "The Church and the World," edited by the Reverend Orby Shipley, clerk, printed and published at London in the year 1867; "A Plea for Toleration in the Church of England, in a Letter to the Reverend E. B. Pusey, D.D., Regius Professor of Hebrew, and Canon of Christ Church, Oxford, Second Edition," printed and published in London in the year 1867; and "A Plea for Toleration in the Church of England, in a Letter to the Reverend E. B. Pusey, D.D., Regius Professor of Hebrew, and Canon of Christ Church, Oxford, Third Edition," printed and published in London in the year 1868;—the said articles to be administered to him, the said William James Early Bennett, at the voluntary promotion of the said Thomas Byard Sheppard;—and finally to hear and determine the said cause according to the law and practice of the Court. In witness whereof we have hereunto set our hand and seal this 9th

of April, in the year of our Lord 1869, and in the 15th year of our translation.

Auckland, Bath and Wells.

The letters of request were received by the Dean of the Arches, and in compliance with them a decree or citation was served upon the defendant, in which he was charged with having published certain works "in which he, the said James Early Bennett, advisedly maintains or affirms doctrines directly contrary or repugnant to the Articles and Formularies of the United Church of England and Ireland, which works are more particularly specified, set forth, and quoted in the letters of request hereinbefore recited, and so accepted by us aforesaid." No appearance having been given to the decree on the part of the defendant, he was pronounced in contempt, and the proceedings went on *in penam*.

The matter (on Oct. 26) came before the Court on the admission of the articles, which, in addition to the heresies specified in the letters of request, further charged the defendant with maintaining and promulgating the doctrine that "the wicked eat the Body of Christ in the use of the Lord's Supper" in a work written and published by him, and entitled, "An Examination of Archdeacon Denison's Propositions of Faith on the Doctrine of the Holy Eucharist, with a Prefatory Letter to the Lord Bishop of Bath and Wells." And the question (which was raised by the Court) was whether it was competent for the promoter to lay this further charge in the articles, the matter not having been the subject of inquiry before the Commissioners, nor specified in the letters of request, nor in the citation served upon the defendant?

A. J. Stephens (with him Dr. Tristram, Archibald, and B. Shaw), on Oct. 30, moved the admission of the articles.—The objection raised to the admission of the articles involves the consideration of five questions:—First, what is the office of the Commission issued by the Bishop under the Church Discipline Act? Secondly, what is the office of the letters of request? Thirdly, what is the office of the citation? Fourthly, what is the office of the articles? Fifthly, whether the articles charge an offence of

a different nature from that alleged in the letters of request and citation? As to the first, the Commission is the creature of the Act, and the powers and duties of the Commissioners are therein clearly defined. The Commission is but a preliminary proceeding, and its object is to inform the Bishop whether there are sufficient grounds for the institution of a suit—*Ditcher v. Denison* (1), *Farnall v. Craig* (2), *Sanders v. Head* (3). *Lincoln v. Day* (4) is decisive as to the authority of the Court to deal with charges not brought before the Commissioners, and the principle of that case was recognised by Dr. Lushington in *The Bishop of London v. Bonwell* (5). As to the office of the letters of request, it has been defined in the recent case of *Martin v. Mackonochie* (6), and in the Ritual Commissioners' Report, p. 44. It is not necessary that they should follow any particular form, or that they should set out particular passages from the works which are alleged to contain the heretical doctrine charged against the defendant. The same remark applies to the citation. The office of the articles is to enter into a detailed account of the charge—*Jones v. Jelf* (7). It is competent to expand in the articles the charge contained in the letters of request. If the letters of request set forth a charge of alleged heresy as contained in a particular book, and recite only a few passages from such book, it is competent in the articles to set out other passages, and even to refer to other works written and published by the defendant. The articles here do not charge an offence of a different nature from that comprised within the letters of request and citation.

[Sir R. J. PHILLIMORE.—Should not the defendant have notice in the citation of the particular heresy with which he is charged?]

The citation is not settled by counsel, but by the registrar. Such as it is, however, it is sufficient. It need not set forth the nature of the heresy—*Her Majesty's*

- (1) 11 Moore P.C. 341.
- (2) 5 Notes of Cases, 570.
- (3) 3 Curt. 48.
- (4) 4 Notes of Cases, 299.
- (5) 6 Jurist (n.s.) 709.
- (6) 38 Law J. Rep. (n.s.) Eccles. 9.
- (7) 8 L. T. (n.s.) 399.

*Procurator General v. Stone* (8). Lastly, the work entitled "An Examination of Archdeacon Denison's Propositions of Faith on the Doctrine of the Holy Eucharist" is incorporated by reference in "Some Results of the Tractarian Movement of 1833," and without it the language of that essay or review cannot be made intelligible to the Court.

*Curr. adv. vult.*

On the 19th of November judgment was given as follows:—

SIR R. J. PHILLIMORE.—Upon a former occasion when this case came before me, I made the following observations which I must now repeat:—"This is a case of very great importance to the defendant, and still more to the Church of which he is a minister. The diocesan of the defendant has allowed an individual layman to promote his office, and to act the part of public prosecutor against the defendant for having published certain works alleged to contain certain statements and positions which contravene the teaching of the Church. The defendant has not thought proper to appear in answer to the citation of his Metropolitan: this circumstance would be to be regretted in any case, but it is especially to be regretted in the present, inasmuch as many of the charges against the defendant appear to be that he has adopted and approved the positions of other persons, and those divines of very great reputation, upon the subject of his alleged heresy, and these other divines are not and cannot be cited before the Court in this suit to make their defence. The contumacy, therefore, of the defendant in refusing to appear to the citation of the Archbishop's Court, not only leaves without defence his own statements, but also those of the distinguished divines which he has adopted; and, moreover, places the Court in a position of great difficulty; because, while on the one hand the defendant ought not to be advantaged by his contumacy, on the other hand it is the duty of the Court to see that charges of this very serious nature, which must affect interests far beyond those of the defendant, are properly laid, and that justice is done in a matter of the gravest

nature, while in the execution of its duty it is deprived of the ordinary assistance of counsel, and obliged to hear argument on one side only.

According to the usual and convenient practice of this Court, the criminal articles, if in the opinion of the accused party they do not contain the allegation of an offence which, if it were proved, would amount to a breach of ecclesiastical law, are objected to or demurred to, it being assumed for the purposes of the discussion that the allegations are true; and thus it often happens that the question of law, that is, whether the charges do shew a case of heresy or not, is decided upon when the admissibility of the criminal articles is debated, and thereby delay and expense are avoided. But after some reflection it appears to me that this course cannot be pursued in the present instance, and that, if there be any charges in the articles before me laid which might by any possible construction amount to an ecclesiastical offence, I ought to admit such articles to proof; reserving to myself, after proof has been given of the facts alleged, and after hearing argument on such proof, the consideration of the criminality of the defendant, and, if that criminality be established, the punishment to be awarded. The proceedings being *in pœnam* in this case, the admissibility of the articles is necessarily moved by counsel in Court, and the attention of the Court is necessarily called to them at this stage; and I must, therefore, while reserving as I have said the main question for the hearing, endeavour, though without the assistance of counsel for the defendant, to see that they are in such shape and form as duly to present the charges which it is competent to the prosecutor to lay, and which he hereafter undertakes to prove.

The articles which contain the criminal charges are laid under the general ecclesiastical or canon law, and not under the statute of Elizabeth. The jurisdiction of this Court in the present case is founded not on the general law which would have devolved the case in due course of appeal from the decision of the Bishop upon it, but on the Statute (3 & 4 Vict. c. 86) of her present Majesty;

and according to that statute the Bishop of the place, in which the alleged offence of publishing heretical doctrines was committed by the defendant, issued a commission; that commission found a *prima facie* case for further inquiry, and the return of the commission was made to the Court of the Bishop of the diocese in which the defendant held preferment; that Bishop, declining to try the defendant, sent the case by letters of request to this Court, the acceptance of which the Judicial Committee of the Privy Council has decided to be compulsory upon it. My jurisdiction, therefore, it appears to me, is founded on and limited by the charges laid before the Commissioners, and that I have no authority to deal with any charges which were not laid before them. It is, moreover, a clear axiom of the law and practice of this Court—that no charges can be laid in criminal articles against a defendant, of which he was not apprized by the citation or decree which summoned him to appear before this Court. Applying these observations to the consideration of the articles before me, I must decide upon their admissibility in their present shape.” I then proceed to point out various particulars, in which, it appears to me, that the articles must, in compliance with these principles, be reformed.

Upon Tuesday last the admissibility of these articles was discussed before the Court, and I was informed, by the counsel for the prosecutor, that, in consequence of my observations, the articles had undergone a partial reformation, by striking out all reference to the first edition of one of the works mentioned in the articles, and the Court was requested to permit some other reformation of a trifling character to be made, and this permission was granted. The objection, however, which the Court had suggested to the attention of the counsel with respect to a portion of the fifth article,—namely, that part which begins, “But this was not all. The university indeed had,” &c., &c., down to the words, “when such, by God’s mercy, may be had,” and also the part beginning, “Then followed, in 1855, your voluminous work,” &c., &c., down to the end of the article, and other portions of the articles

referring to the same subject as is contained in the aforesaid portions of the fifth article,—was not admitted by the counsel to be valid, and it was argued that these portions of the articles were properly laid, and ought not to be struck out. This passage in the fifth article and the others connected with it have for their object to charge the defendant with having expressed an opinion in one of his works which contravenes the twenty-ninth of the thirty-nine Articles of Religion; the title of which twenty-ninth article is, “Of the wicked which eat not the body of Christ in the use of the Lord’s Supper.” By the other portion of the fifth article of charge, and by the other articles, the defendant is in substance charged with affirming the following doctrines, alleged to be heresies:—first, The actual presence of our Lord in the Sacrament of the Lord’s Supper; second, The visible presence of our Lord upon the altar or table at the Holy Communion; third, That there is a sacrifice at the time of the celebration of the Eucharist; fourth, That adoration or worship is due to the consecrated elements of the Lord’s Supper. The passage, therefore, in the fifth criminal article which charges the defendant with maintaining the doctrine that, “The wicked eat the body of Christ in the use of the Lord’s Supper,” contains a charge of a distinct and separate offence; for it is clear that the doctrine of the Real Presence may be holden and has been holden by those who deny the reception of the Eucharist by the wicked. The question which I now have to decide is, whether, in these particular proceedings, it is competent to the prosecutor to lay this charge, in addition to those which I have mentioned, against the defendant. The answer to this question must be sought in an examination of the statute of the 3 & 4 of Her Majesty, of the practice of the court in criminal cases, of the principles upon which that practice is founded in their application to the present case.

It appears to be admitted, or, at least, I think it is proved, that the particular charge in question was not preferred before the Commissioners. It is certainly not specifically set forth either in the letters of request to me, or the decree em-

bodily those letters of request which was served upon the defendant, and which is the beginning of this suit.—*Ditcher v. Denison* (1). Nor is it a charge which can be raised by necessary implication, if that in a criminal suit were sufficient, from the passages recited in the letters of request and in the decree. It is contended, however, that I am bound to be ignorant of what passed before the Commissioners, and that the selection of passages in the letters of request and decree does not affect the question, inasmuch as they were superfluous and erroneously introduced in these instruments. In a case like the present, where letters of request are sent, not before, but after due issue and report of a Commission, it seems illogical and impossible wholly to separate the two, because the letters of request are founded upon the report of the Commissioners. These letters, therefore, necessarily recite, as in this case, the charge before the Commissioners, and their finding upon it, and the act directs that the depositions of the witnesses examined before the Commissioners and their report should be filed in the registry of the diocese. Sir Herbert Jenner said in *Homer v. Jones* (9): "It is very certain that he, the Bishop of Worcester, could not take any notice under the statute of this offence, which was committed beyond his jurisdiction. But it is said that, although the Bishop could not, yet that this Court, as possessing jurisdiction throughout the whole province of Canterbury, might receive the charge. Now, the case is sent here by letters of request, which letters embody the proceedings before the Commissioners, and those proceedings are the very foundation of the case before this Court. I am of opinion that the Commissioners can proceed only within the diocese of the bishop who issues the Commission; and I must presume that they have bounded their inquiries, as they ought to have done, within that limit, and I therefore reject this article." In *The Bishop of London v. Bonnell* (5) an objection was taken that the Court of Arches could not adjudicate upon charges not reported by the Commissioners, and Dr. Lushington, when the admissibility of the articles was debated, seems to have doubted

(9) 9 Jurist, 167.

as to the effect of the Commissioners' report on the proceedings in the articles, but in giving sentence he founded his decree only upon the charges that had been reported by the Commissioners; and when the case was appealed to the Privy Council, their Lordships said, "It is unnecessary for their Lordships to pronounce any opinion, whether, in the proceedings under the Church Discipline Act, the Court of Arches may entertain and adjudicate upon charges not reported by the Commissioners as fit to be enquired into, for the point really does not arise in this case. The authorities cited before their Lordships and in the Court below do not appear to be entirely in unison, and many arguments of weight may be urged on either side. If ever a case should come before their Lordships, the facts of which make a decision necessary, it will be their Lordships' duty to lay down the rule; the facts will then be presented more precisely, and they will have the advantage of hearing the points argued at the bar more fully than has now been done. But assuming the contention of the appellant to be well founded, more than one answer now occurs: First, the insertion of an objectionable item of charge will not vitiate others well laid, nor can it form any valid ground of objection to the judgment when the Judge has confined himself to the charges which are well laid. Now, in this case the learned Judge in the Court below, who was evidently quite aware of the nature and weight of the objection, has carefully excluded from the ground of his decision any fact of adultery in London or elsewhere, and has limited himself to the charges to which the objection does not apply." See *Moore, P.C.* vol. 14, p. 411. In the present case the letters of request informed me at great length of the charges which were laid before the Commissioners, and the last extract from the defendant's work contains a passage which, I think, must be fairly considered as comprising the alleged heresies for which he is prosecuted. The words are these: "The three great doctrines on which the Catholic Church has to take her stand are these: 1. The real objective presence of our Blessed Lord in the Eucharist; 2. The Sacrifice offered by the Priest; and 3. The adora-

tion due to our Blessed Lord therein." I do not see why it would be more competent to this Court to try a charge not preferred before the Commissioners than it would be for the Bishop who issued the Commission if he had heard the cause himself after the finding of the Commissioners. For the Act expressly provides that a copy of the depositions taken before the Commissioners is to be filed in the Court and articles to be drawn up, and the whole context seems to shew that these articles must be confined to the charges which were laid before the Commissioners. The statute provides also (section 13) that when the case is sent by letters of request to the Court of Appeal of the Province, it is "to be there heard and determined according to the law and practice of such Court." Now there is no point of the law and practice of this Court more certain than that the articles cannot contain a charge which is not to be found in the citation, and the decree in this case, which is served on the defendant, is the citation. This important point of law and practice has been very often laid down. Perhaps no stronger instance can be found than the decision in *Breeks v. Woolfrey* (10). It was a question as to the admissibility of the articles in a cause of office, promoted by the Rev. John Breeks, the vicar of the parish of Carisbrooke, in the Isle of Wight, against Mary Woolfrey, widow, "for having unduly and unlawfully erected, or caused to be erected, a certain tombstone in the churchyard of the said parish of Carisbrooke, to the memory of Joseph Woolfrey, late of the said parish, deceased, and a certain inscription to be made thereon contrary to the articles, canons, and constitution, or to the doctrines and discipline of the Church of England." These were the words of the citation.

"Dr. Addams opposed the admission of the articles. The grounds," he said, "on which the party is proceeded against in the articles are two. First, the erection of a tombstone without leave of the vicar of the parish; and, secondly, placing thereon an inscription contrary to the articles, canons, and constitution, or to the doctrine and discipline of the Church of England.

(10) 1 Curt. 882.

"Sir H. Jenner.—It is stated in the articles that it was done without leave of the incumbent.

"Dr. Addams.—No.

"Sir Herbert Jenner.—They are separate and distinct offences, but there is no mention in the citation of the leave of the incumbent; the articles ought to agree with the citation.

"Dr. Addams.—I am not disposed to take the objection.

"Sir Herbert Jenner.—But must not the Court take the objection, this being a criminal suit? If it was intended to proceed on the ground that the erection was without leave of the incumbent, it should have been stated in the citation." And, in giving judgment, the Court said: "The other branch of the case is subject to different considerations, namely, the erection of the stone without the consent of the incumbent, which is an ecclesiastical offence. It has been suggested in the argument, that the proceedings on this branch of the case should have been in the civil form, by monition; but it seems to me that this is the proper form of proceeding; I am not aware of any case, in which a different form has been followed. But this offence was not specified in the decree, or citation, served on the party. The only ground of illegality on the face of the citation consisted in the inscription; the erecting, or causing to be erected, a monument, without the leave of the incumbent, is a distinct and separate offence, which should have been set forth in the citation, in order that the party cited might know what she was called upon to answer. I am clearly of opinion that, according to the law and practice of this Court, the citation was insufficient to raise the question whether the consent of the incumbent had been obtained or not; and, on this part of the case likewise, I am of opinion that the articles are inadmissible."

It has been argued that the recital in the letters of request, and in the citation or decree, of the various passages containing the alleged heresy was superfluous and unnecessary, and that as the works from which these passages were extracted were also referred to in the citation, that Mr. Bennett may be articulated against for

any heresy contained in those works, but the statute says that the "Law and Practice" of this Court is to be adopted. The extracts in question constitute, consequently, as it appears to me, what is technically called the *præsertim* of the charge; and that experienced and eminent ecclesiastical judge, Sir John Nicholl, says, "The *præsertim* is always construed as setting forth the nature of the principal charges; the general words as only including subordinate charges, *ejusdem generis*"—*Bennett v. Bonaker* (11).

In the decree or citation served on Mr. Bennett, he is charged with having published "certain works," in which "the said James Early Bennett advisedly maintains or affirms doctrines directly contrary or repugnant to the articles and formularies of the United Church of England and Ireland, which works are more particularly specified, set forth, and quoted in the letters of request hereinbefore recited, and so accepted by us as aforesaid." It could not be denied that by these words the *præsertim* is confined to the extracts, but it was said that this instrument was prepared in the registry and not by counsel. I believe that the usual course has been pursued; but it was clearly the duty of the legal advisers of the prosecutor who extracted the instrument, if they conceived it to have been not properly worded, to have applied for another instrument; at all events the defendant is entitled to the application of the law upon the instrument which was actually served upon him. The charge of heresy as to the doctrine of the reception of the Eucharist by the wicked is, as I have already said, a distinct and separate charge.

It has been also argued that it has not been usual, in these cases of heresy, that the citation should contain more than a general charge of heresy, leaving the particular nature of the heresy to be afterwards specified in the articles. One and a sufficient answer is that this is not the course which the prosecutor has thought proper to pursue in the present case. It was not denied by counsel that, if a particular heresy were specified in the citation, the charge of another heresy would

not be admissible in the articles; and in point of fairness and justice to the defendant, it surely can make no difference whether he be charged with passages containing certain heresies, or with a distinct charge of maintaining those certain heresies.

The counsel for the prosecution referred me to a judgment of the Court of Queen's Bench, delivered in last Easter Term, from which, as well as from the explanation of counsel, I gather the following not unimportant facts with reference to the present question. First, it appears that the counsel for the prosecution, not being satisfied that they could lay the charge of this particular heresy in the present articles, applied to the present Bishop of London for a fresh commission against Mr. Bennett, in order that this very charge might be preferred against him. The Bishop of London, in the exercise of his episcopal discretion, refused to allow a fresh commission to issue, whereupon the prosecutor applied to the Court of Queen's Bench for a mandamus against his lordship. That Court refused to issue the mandamus, it is said, because they thought that the charge could be laid in the present articles. Certainly, if the Queen's Bench had expressed any such opinion I should have attended to it with all the respect and deference due to the opinion of such a tribunal, bearing in mind, nevertheless, that the subject of the pleadings in the Ecclesiastical Court was one with which their lordships could not be very familiar, and also that they had only heard the argument on one side of the question. But I do not find, from a perusal of the report, that any such conclusion can be fairly drawn. It appears to me that the mandamus was refused, first, because the inclination of the Court was, that the bishop had a legal discretion to exercise in the matter with which they could not interfere, and I may observe in passing that, if a bishop has not such a discretion, it is difficult to conceive how the government of any diocese can be properly carried on; secondly, on the ground that by the present proceedings the heterodoxy of the accused, with respect to the general subject-matter of the Eucharist, was sufficiently raised. On the grounds, therefore,

C

that this particular charge of heresy was not preferred before the Commissioners, on whose report the subsequent proceedings are founded, and that it was not mentioned in the letters of request, or in the decree or citation, I should, having regard to the law and practice of this Court, and the authorities to which I have adverted, be of opinion that the articles must be reformed by striking out the portions which relate to it. Assuming, however, for the sake of argument, that these objections do not apply to the present case, there remains one of even a graver character to be stated.

This is a highly penal proceeding against the defendant. It is a criminal suit for the promulgation of heresy. The particular charge is not on account of a heresy distinctly stated or uttered in any sermon, or public act of preaching, or statement, connected with the discharge of his duties as incumbent of the parish committed to his charge. It is a heresy alleged to be contained in an essay or review upon ecclesiastical events in the Church since the year 1833. It is to be extracted from what purports to be an historical statement of a trial against another clergyman as long ago as the year 1856. The author remarks that Archdeacon Denison was condemned by the then Archbishop of Canterbury for teaching the doctrine of the real presence (not a quite accurate statement I may observe in passing), that the sentence was reversed, that a protest against the Archbishop's sentence was signed by seventeen priests, of whom the defendant is said to be one. It is contended that by this reference to the protest which is in a work not mentioned in the citation, he has made himself responsible in this suit, be it observed, for what is contained in that protest. The passage in the extract from the book (which book is before the Court), to which I was referred, as making him responsible, is as follows: "After this nothing further was heard of the silly trial of *Ditcher v. Denison*. It died a natural death. But what became of the doctrine? From 1853, when it passed the judgment of Heads of Houses in Oxford, to 1867, when at length no one is inclined to resist it, it has grown and multiplied with wonderful rapidity;

according to the saying, '*Magna est veritas et praevalabit.*'" When the context of the passage is examined it clearly appears that the writer is speaking, however inaccurately, not of the alleged specific heresy of the "reception of the Eucharist by the wicked" and the contravention of the 29th article of religion, but of the general doctrine of the real presence. The alleged heresy of maintaining that doctrine is charged in the articles, and the prosecutor will have the opportunity of contending that Mr. Bennett is punishable for maintaining it. To make the defendant chargeable with a particular heresy, on which in the work which is before the Court he is not commenting, simply because that heresy is to be found in a work referred to by him, which work is not before the Court, would be, I think, to establish a doctrine of constructive heresy in a criminal suit—a doctrine unknown to ecclesiastical jurisprudence since the abolition of the Star Chamber and the High Commission Court, and one which would be at variance with the spirit, if not with the letter, of the decisions given by the Judicial Committee of the Privy Council, and by this Court in suits of this character.

After much consideration I have arrived at the conclusion, from the reasons which I have stated, that the articles must be further reformed by striking out all that relates to the charge of contravening the 29th Article of Religion as to the reception of the Eucharist by the wicked, and I direct them to be reformed accordingly.

The articles so reformed will, as I have already said, but for the sake of clearness will now repeat, still contain the following charges for alleged heresy:—1. The actual presence of our Lord in the sacrament of the Lord's supper. 2. The visible presence of our Lord upon the altar or table of the holy communion. 3. That there is a sacrifice at the time of the celebration of the Eucharist. 4. That adoration or worship is due to the consecrated elements of the Lord's Supper.

Leave to appeal was granted.

---

Proctors—Moore & Currey, for promotor.

---



## [IN THE PRIVY COUNCIL.]

1869. } JOHN MARTIN, *appellant*, v. THE  
Dec. 24. } REV. ALEXANDER HERIOT MAC-  
KONOCHE, *respondent*.\*

*Judicial Committee—Monition—Disobedience to—Holy Communion—Elevation of Cup and Paten—Kneeling or Prostration.*

*On appeal from the Arches Court in a proceeding under the Church Discipline Act, the respondent, a clerk in orders, was monished to abstain from the elevation of the cup and paten, during the administration of the Holy Communion, and from kneeling or prostrating himself before the consecrated elements during the prayer of consecration.*

*On a motion to enforce obedience to such monition, it appeared that the sentence of the Arches Court, which was affirmed by the Judicial Committee, monished the respondent not to elevate the elements "above the head of the respondent," and that the respondent had literally obeyed that monition. But their Lordships intimated, that any elevation as distinguished from the mere act of removing the elements from the table, and taking them into the hands of the minister, is not sanctioned by law.*

*It further appeared, that the respondent bowed one knee at certain parts of the prayer of consecration, to an extent that it, occasionally, touched the ground:—Held, that such a bowing of the knee was a breach of the monition, and that it is not necessary that a person should touch the ground, in order to perform an act of reverence.*

*This was a motion by the appellant in this appeal, praying their Lordships to enforce obedience by the respondent to the monition made on the appeal.*

*The appeal was from a decree of the official principal of the Arches Court of Canterbury, in a cause of the office of the Judge promoted by the appellant against the respondent, a clerk in holy orders of the United Church of England and Ireland, the Incumbent and Perpetual Curate of the parish of St. Alban's, Holborn.*

*The articles charged the respondent with having, within his said church, and within two years then last past,*

\* Present.—The Lord Chancellor (Lord Hatherley), the Archbishop of York (Dr. Thomson), Lord Chelmsford, Sir J. Colvile, and Sir J. Napier.

*offended against the laws ecclesiastical, by having during the prayer of consecration, in the order of the administration of the Holy Communion, elevated the paten above his head, and permitted and sanctioned such elevation, and taken into his hands the cup, and elevated it above his head during the prayer of consecration, and permitted and sanctioned the cup to be so taken and elevated, and with having knelt or prostrated himself before the consecrated elements during the prayer of consecration, and permitted and sanctioned such kneeling or prostrating by other clerks in holy orders; and with having used lighted candles on the communion table during the celebration of the Holy Communion, at times when such lighted candles were not wanted for the purpose of giving light, and permitted and sanctioned such use of lighted candles.*

*The official principal pronounced that the respondent had offended against the laws ecclesiastical, by the elevation of the cup and paten in the manner charged during the administration of the Holy Communion, and did monish him to abstain from such practices for the future; but he declined to pronounce that the respondent had offended against the laws ecclesiastical, by having knelt or prostrated himself before the consecrated elements during the prayer of consecration, and by having permitted and sanctioned such kneeling or prostrating by other clerks in holy orders; and did also decline to pronounce that the respondent had offended against the laws ecclesiastical, by having used lighted candles on the communion table during the celebration of the Holy Communion, at times when such lighted candles were not required for the purpose of giving light, and by having permitted and sanctioned such use of lighted candles.*

*The appeal had reference only to the kneeling or prostration before the consecrated elements, and to the use of lighted candles.*

*On the 23rd of December, 1868, the Judicial Committee reported to her Majesty their opinion that the decree of the Court below ought to be amended; and that, in addition to the matters in which the respondent was, in the*

decree appealed from, pronounced to have offended, and from which he was thereby monished to abstain for the future, the respondent ought to be pronounced to have offended against the laws and canons of the Church of England, by having, within the church of St. Alban's, knelt or prostrated himself before the consecrated elements during the prayer of consecration; and also by having within the said church used lighted candles on the communion table during the celebration of the Holy Communion, at times when such lighted candles were not wanted for the purpose of giving light; and that the respondent ought to be admonished to abstain for the future from kneeling or prostrating himself before the consecrated elements during the prayer of consecration; also, from using in the said church lighted candles on the communion table during the celebration of the Holy Communion, at times when such lighted candles were not wanted for the purpose of giving light; and further, that the respondent ought to be condemned in the costs both in the Court below and in the Court of appeal.

On the 14th of January, 1869, the Report of their Lordships was confirmed by Order in Council.

On the 20th of January, 1869, the monition was served on the respondent.

Affidavits in support of the motion were filed on behalf of the appellant, alleging:—

That the respondent had, since the service of the said monition, at the commencement of Morning Prayer permitted eight lighted candles to be and remain upon a shelf, about six inches above the level of the Communion table, and which appeared to form part thereof, two of such candles being in candlesticks, and six in two candelabra, holding three candles each, such candlesticks and candelabra standing upon the said shelf. That the said eight candles were extinguished immediately before the commencement of the said Communion Service, up to which time they were kept continuously burning. That neither such lamps nor such candles were required for the purpose of giving light.

That since the service of the said monition, when the respondent, in celebrating

the Holy Communion, came to that part of the Prayer of Consecration at which the Rubric directs the priest to take the paten into his hands, had paused in reading the said prayer; and that during such pause, and before taking the paten into his hands, the respondent bowed himself down to the Communion table; that he then stood upright, and immediately afterwards knelt down upon the steps leading to the Communion table; that after kneeling for a few seconds, he rose and again stood up, and took the paten into his hands, and raised it level with his head; that he then replaced the paten upon the Communion table; that he then again bowed down to the Communion table; that he then again stood upright, and immediately afterwards knelt down upon the steps leading to the Communion table; that after kneeling for a few seconds he again rose, stood up and proceeded with the said Prayer of Consecration until he came to that part at which the Rubric directs the priest to take the cup into his hands; that he then again paused in reading the said prayer; that during such pause, and before taking the cup into his hands, he bowed himself down to the Communion table; that he then stood upright, and immediately afterwards knelt down upon the steps leading to the Communion table; that after kneeling for a few seconds, he again rose and stood up, and took the cup into his hands and raised it level with his head; that he then replaced the cup upon the Communion table, and again bowed down to the Communion table; that he then rose and stood upright, and immediately afterwards knelt down upon the steps leading to the Communion table; that after kneeling for a few seconds he again rose, stood up, and proceeded with the Prayer of Consecration.

The respondent filed affidavits, stating that he had not, since the service of the said monition, prostrated himself or knelt on the steps leading to the Communion table, or elsewhere, when celebrating the Holy Communion, during any part of the Consecration Prayer; but he admitted that it was his practice during the Prayer of Consecration, when celebrating Holy Communion, and whilst standing before the holy table, reverently

to bend one knee at certain parts of the said prayer, and that occasionally in so doing his knee momentarily touched the ground, but that such touching of the ground was no part of the act of reverence; and that having regard to the positions of the celebrating and assisting priests during the Consecration Prayer, as well as to the length and nature of their dress, it was not possible for any person in the body of the church to say whether the respondent did kneel or not.

The respondent filed a further affidavit, alleging that he had never intentionally or advisedly in any respect disobeyed or sanctioned any practices contrary to the provisions of the monition.

The appellant prayed their Lordships to declare that the respondent had not complied with the monition, inasmuch as he continued to elevate the cup and paten during the administration of the Holy Communion; to kneel or prostrate himself before the consecrated elements during the Prayer of Consecration; to use lighted candles on the Communion table at times when such lighted candles were not wanted for the purpose of giving light; and further that the monition might be enforced in such manner as their Lordships might think fit.

*A. J. Stephens, Archibald, and Droop*, for the appellant.—The respondent has not complied with the monition. He continues to elevate the cup and paten during celebration, and to kneel or prostrate himself before the consecrated elements during the prayer of consecration, and to use lighted candles on the Communion table at times when such candles are not wanted for the purpose of giving light. The affidavits shew that there has been no compliance with the monition.

[The LORD CHANCELLOR.—The monition forbids the use of lighted candles on the Communion table during the celebration of the Holy Communion, but the affidavits say that the candles were put out before the celebration.]

With reference to the lighted candles there has been an evasion of the judgment. The principle of the judgment was that there should be no lights of a symbolical or ceremonial character. There

can, however, be no doubt as to the disobedience by the respondent in respect to that part of the monition which directs the respondent not to elevate the cup and paten, and not to kneel and prostrate himself during the prayer of consecration. This is in direct opposition to the judgment of the Privy Council in *Martin v. Mackonochie* (1).

[The LORD CHANCELLOR.—To constitute the offence the consecration must have taken place before the kneeling and prostration.]

The moment the priest takes the cup or bread into his hands the consecration commences. It may be assumed that the respondent obeyed the Rubric, and if so, he consecrated when he took the cup in his hands.

[The LORD CHANCELLOR.—This is a criminal charge, and it is necessary to construe the affidavits strictly.]

The cup is never elevated till after consecration. If it were not so, it would be an unmeaning ceremony. It is clearly established by the affidavits that the respondent has elevated the cup and paten.

*Mr. Mackonochie* appeared in person.—There is no legal means by which this Court can enforce obedience to the monition. The monition is therefore null and void.

[The LORD CHANCELLOR.—The only question now is whether the monition has been complied with.]

The elevation complained of, and condemned by the Judge of the Arches Court, has not in fact been continued. The elevation alleged in the affidavits in support of this motion, if there be any such elevation, is another and a different elevation. The elevation complained of was an elevation above the head; there has been no such elevation since the monition. With reference to the charge of kneeling, the affidavits are imperfect and incorrect. It has never been my practice to kneel, and certainly since the monition I have never knelt during the prayer of consecration. I may have knelt after the prayer of consecration was ended. This being a criminal charge, the appellant is bound to

(1) 38 Law J. Rep. (n.s.) Eccles. 1.

shew disobedience with the greatest strictness. I have yielded a fair obedience to the monition. I have only bent the knee. It may have accidentally touched the ground, but if so, it is no part of the act of reverence. The question then is, what is the meaning of the expression "kneeling?" It is defined in *Bailey's Dictionary*, "To bear oneself upon the knees." I maintain, as regards the charge of kneeling, that kneeling is a distinct posture. The body must rest upon the knees. It is true Dr. Johnson gives a different definition, but all his four examples fall within Bailey's definition: "To perform the act of genuflexion," "To bend the knee."

When thou dost ask my blessing, I'll kneel down  
And ask of thee forgiveness (2).

Ere I was risen from the place that shew'd  
My duty kneeling, came a reeking post,  
Stew'd in his haste, half breathing, panting forth  
From *Goneril*, his mistress, salutation (3).

"A certain man, kneeling down" (4).  
"At the name of Jesus every knee should bow" (5). Bowing the knee is a distinct act from kneeling. Bishop Taylor says, "As soon as you are dressed kneel down" (6). In every instance in the Prayer Book, "kneeling" is used to express the going upon the knees. Two things are necessary to a kneeling, first, that the body should rest on the knees; secondly, that it should be for an appreciable time.

[Sir J. NAPIER.—Is there any intermediate attitude recognised by the Rubric?]

I bend the knee as an act of reverence.

[The LORD CHANCELLOR.—It is not a question of motive.]

Then with regard to the alleged "prostration," I should contend that "prostration" is an extreme act of kneeling.

With reference to the elevation, the elevation which I was monished not to continue was the elevation as pleaded in the articles, which was an elevation "above the head." With reference to the use of lighted candles, the charge

was that I used lighted candles on the Communion table during the celebration of the Holy Communion, when such candles were not wanted for the purpose of giving light. Now, the affidavits expressly shew that the candles have not been lighted during the celebration of the Holy Communion. It is clear, then, that there has been no violation of the monition in respect of the candles. I may add that I had no intention of disobeying the monition.

*Stephens* in reply.—The only question is whether the respondent has obeyed the monition. The monition must be construed in accordance with the Book of Common Prayer. The Rubric directs the priest to take the paten and cup into his hands. The monition orders the respondent not to elevate the paten and cup. There must be a distinction between taking the cup or paten into the hands and an elevation. To take is to lay hold of, and involves no further lifting than is necessary for such taking. To elevate is "to raise aloft." The degree of elevation which the respondent admits is not sanctioned by the Prayer Book. The monition must be construed with reference to the judgment, and the judgment expressly directs the respondent to continue in one posture till the Prayer Book directs him to change that posture, but the respondent must admit that his posture is changed. There is therefore a breach of the monition.

The LORD CHANCELLOR delivered the judgment of their Lordships.—In this case a motion has been made, calling upon their Lordships to take proceedings in order to enforce the monition which has been served upon the reverend respondent, with regard to the execution of a sentence, pronounced in the first instance by the Court of Arches. This sentence was in some degree extended and modified by the judgment which this Committee was called upon to pronounce, or rather by the decision which they were called upon, after argument, to recommend as fit to be made by an Order of Her Majesty in Council.

The order provided for several matters; as to three of which only it is now alleged that there has been a breach by the

(2) Shakspeare, *K. Lear*.

(3) *Ibid*.

(4) St. Matthew's Gospel, c. xvii. v. 14.

(5) Epistle to Philippians, c. ii. v. 10.

(6) Taylor's Guide to Devotion.

respondent of the monition issued in pursuance of the order. Those three matters are,—First, that he continues to elevate the cup and paten during the administration of the Holy Communion; secondly, that he continues to kneel or prostrate himself before the consecrated elements during the Prayer of Consecration; and thirdly, that he continues to use lighted candles on the Communion table, at times when such lighted candles are not wanted for the purpose of giving light.

In order to see how far that which is complained of has been a breach of the monition, we must of course in the first instance look to the monition itself. The monition having recited that the respondent was pronounced to have offended against the Statutes, Laws, Constitutions, and Canons of the Church of England, by having knelt or prostrated himself before the consecrated elements during the Prayer of Consecration, and also by having, within the said church, elevated the cup and paten during the Holy Communion, and also by having used lighted candles on the Communion table during the celebration of the Holy Communion, at times when such lighted candles were not wanted for the purpose of light, proceeds to direct him to abstain for the future from the elevation of the cup and paten during the administration of the Holy Communion, and from kneeling or prostrating himself before the elements during the Prayer of Consecration, and also from using in the said church lighted candles on the Communion table during the celebration of the Holy Communion, at times when such candles are not wanted for the purpose of giving light.

The evidence which is before their Lordships is addressed to these three several heads. We will deal with them in a different order from that in which they appear in the prayer of the application, and take the use of lighted candles on the Communion table, at times when such candles are not wanted for the purpose of giving light, in the first instance, because with reference to that part of the case, it appears to their Lordships that the affidavits do not make out the offence charged. In the first place, it appears that the offence charged is not in strict

conformity with the monition, because the monition is itself confined to using those candles on the Communion table, *during the celebration of the Holy Communion*; and the charge which is made in the motion now before this Committee, is that they were used *on the Communion table at times when they were not wanted for the purpose of giving light*, leaving out the words, "*during the time of Holy Communion.*"

Of course it is not competent for their Lordships to proceed beyond the actual monition which has been served upon the respondent. It is that which he is said to have disobeyed, and it is to disobedience of the monition only that their Lordships can address themselves.

It is plain upon the affidavits that the candles have not been lighted during the Holy Communion, for the course taken by the respondent has been this, that the candles are lighted, as he says they always have been, and were at the time of the proceedings herein being taken, and are kept burning up to the period of the Holy Communion, and then immediately before the commencement of the Holy Communion they are extinguished.

There is no doubt, therefore, in this case, of a literal compliance with the terms of the monition. The candles are not lighted during the period of the Holy Communion. They are lighted, indeed, when there is no necessity for their being lighted for the purpose of giving light, but they are extinguished before the Holy Communion; therefore the compliance with the terms of the monition has been literal and complete, and not, in that sense, evasive, for the respondent was limited to a particular time, in reference to the candles; and whatever one may feel as to the course of the reverend respondent, looking to the spirit of the monition, of course the monition could not go beyond the matters that were charged: the offence charged was one which he has abstained from; and in this respect, therefore, their lordships are clear that the prayer of this motion cannot be complied with.

The next charge is that he continues to elevate the cup and paten during the administration of the Holy Communion; and with reference to this matter, their Lord-

ships feel that the case is placed in a position that is eminently unsatisfactory. On the former occasion the sentence of the Judge in the Court below was approved of with reference to this particular subject matter; therefore, that sentence is the sentence to which recourse must be had by their Lordships when interpreting the monition, which cannot of course proceed further than the sentence itself. The sentence in the Court below was thus worded: the respondent was ordered "to abstain for the future from the elevation of the cup and paten during the ministration of the Holy Communion, and also from the use of incense and from the mixing of water with the wine during the administration of the Holy Communion, as pleaded in the articles."

Their Lordships think that the words "as pleaded in the articles" must be applied to those several offences which were charged in the passage just quoted, namely, the elevation of the cup and paten, also the use of incense, and the mixing of water with wine; and their Lordships are thrown back, therefore, to the articles to see what it was that was there pleaded, and they find this state of circumstances. Originally the third article pleaded that there was an elevation of the cup and paten beyond what was necessary for the purpose of complying with the terms of the Rubric, which directs that at a particular part of the Prayer of Consecration, when the sacred elements are dealt with, the paten shall be taken into the hands, and at another part that the cup shall be taken into the hand or hands (for there is some little variation in the two parts of the Rubric itself) of the officiating minister. That would have been, as it appears to all their Lordships, a charge which would have raised a distinct and definite issue, whether the elevation of the paten or the elevation of the cup were or were not a *bonâ fide* raising it so far only as is necessary for anything to be raised, that is to be taken from the table, or whether or not there was some ulterior purpose, that is to say, an act of elevation wholly distinct from and going beyond what was necessary for the mere purpose of taking the paten and cup into the hands of the officiating minister.

But the words *and otherwise* were also inserted in the same third article in a part which rendered it very difficult to attach any definite sense to them. Those words are so vague that the learned Judge before whom the case first came, Dr. Lushington, conceived that he could not admit the article in that form, and that the words introduced such a degree of vagueness as to render it improper to call upon the respondent to answer the charge in its then shape, and therefore the learned Judge said that the article must be reformed.

In the reforming of that article those who reformed it appear to have gone beyond anything that was required by the decision of the learned Judge in the course of the argument upon the admission of the articles. They not merely struck out the words, "and otherwise," but they also materially varied the language by describing definitely in the reformed article the act which had been performed, namely, that it was an elevation of the elements "*above the head of the respondent.*"

The article then became confined to that particular mode of elevation, instead of being a charge of elevation beyond what was necessary for the proper compliance with the Rubric; and, therefore, when the sentence of the Judge, which directs that he shall abstain for the future from the elevation "as pleaded in the articles," is considered, it appears to their Lordships that they are necessarily confined to that particular charge which is there contained, and that particular mode of elevation which is there complained of.

We have been thus particular in going through all the circumstances of this case, which is left, as it appears to their Lordships, in a very unsatisfactory position, because it is most desirable, and their Lordships are all of opinion that it should be distinctly understood that they give no sanction whatever to a notion that any elevation whatever of the elements, as distinguished from the mere act of removing them from the table and taking them into the hand of the minister, is sanctioned by law. It is not necessary for their Lordships to say more (but most undoubtedly less we cannot say) than that we feel nothing has taken place in

the course of this cause that can possibly justify a conclusion that any elevation whatever, as distinguished from the raising from the table, is proper or is sanctioned. All that their Lordships can say upon the present occasion is, that the point has never yet been in these proceedings raised, that a particular and definite mode of elevation only has been averred and complained of, and with that particular and definite mode of elevation we have nothing further to do, because it is conceded on all sides that such particular mode has been departed from.

It is not for us to say how far the letter to which the respondent himself has referred, and in a part of which he says that the simple compliance with the Rubric, namely, taking the cup and the paten into his hands, would be sufficient for the purpose of satisfying a certain portion of his parishioners as regards the elevation of the elements, may or may not have misled the judges who had this case before them.

They say that the matter complained of having been discontinued, had not been complained of, that is, by the articles, and we have felt it to be right and proper to say that nothing we are now determining, can therefore be pleaded hereafter as a justification for any mode of elevation which is to be distinguished from the mere act of removing the elements from the table, and taking them into the hands of the minister.

Inasmuch, then, as the reverend respondent has said upon oath, and it is not now contravened, that his course of procedure has only been that which he says he adopted at the time of the first hearing of the matter, owing to the complaint made of the higher elevation spoken of in the articles, their Lordships think they cannot in that state of circumstances say that he has thereby committed a breach of the monition which has been served upon him.

The third matter which has been complained of is as follows; and as to this matter their Lordships think the case is open to very different considerations:—

The respondent was admonished “not to kneel or prostrate himself before the consecrated elements during the prayer

of consecration;” and without going through the affidavits, the exact state of circumstances may be taken to be as they appear upon the affidavits made by the respondent himself and by Mr. Walker, the gentleman who was present on the several occasions referred to in the motion. The affidavits in support of the motion stated distinctly acts of prostration and of kneeling during the period of the prayer of consecration. Into the details of those affidavits it is unnecessary to enter, because in the affidavit of the respondent there is this which seems to set the case in a very clear light as far as the facts are concerned. The respondent says: “I did not on either of the days or times mentioned in the affidavits on which this motion is founded, nor have I ever since the service of the said monition on me, prostrated myself or knelt on steps leading to the Communion table, or elsewhere, when celebrating the Holy Communion during any part of the consecration prayer. I admit that it is my practice during the prayer of consecration when celebrating the Holy Communion,”—the time, therefore, is exactly fixed to which the monition would apply,—“and whilst standing before the holy table, reverently to bend one knee at certain parts of the said prayer, and occasionally in so doing my knee momentarily touches the ground, but such touching of the ground is no part of the act of reverence intended by me. Whether my knee may have thus momentarily touched the ground on either of the days mentioned in the said affidavits on which I am stated to be the celebrating priest, I am, of course, unable to say.” Mr. Walker is a little bolder upon that point, because he says this (and he was present on these days)—“I say that the respondent did not prostrate himself or kneel upon the steps leading to the Communion table or elsewhere at any time during the prayer of consecration on the 18th day of July and the 14th day of November, 1869, as mentioned in the affidavits; and to the best of my belief he did not touch the ground with either of his knees at all during that time on the occasions on which the respondent is accused of doing so.” Then he further says this: “And having regard to the

positions of the celebrating and assisting priests during the consecration prayer, as well as to the length and nature of their dress, I do not believe that it is possible for any person in the body of the church to say whether the respondent did kneel or not."

Therefore, the case as stated is this: Mr. Mackonochie being enjoined against kneeling during this prayer, admits a gesture which he contends is not kneeling, but he admits a bowing of his knee, a bowing of it to an extent which occasions it at times momentarily to touch the ground, a bowing of it to an extent which renders it impossible (according to Mr. Walker's affidavit) for anybody to see whether he is or is not kneeling,—that is the distinct statement in the affidavits, namely, that nobody could see whether he is kneeling or not.

First of all their Lordships would consider the literal question which is before them, whether there has been even a literal compliance with the monition in this act of Mr. Mackonochie. Their Lordships are all of opinion that there has not been even a literal compliance; that Mr. Mackonochie has knelt; and that bowing the knee in the manner which he has described is kneeling; and that it is not necessary that a person should touch the ground in order to perform such an act of reverence as will constitute kneeling. Of course there may be such a bowing of the knee, as would not amount to kneeling in the sense of the monition, but Mr. Mackonochie very properly says that he takes no advantage of any suggestion of that sort—there may be an accidental bowing of the knee, arising from fatigue or otherwise; but here is a knee bent for the purpose of reverence and in such a manner that those who behold cannot tell whether or not what Mr. Mackonochie and Mr. Walker call kneeling, that is, touching the ground with the knee, has been arrived at, and indeed Mr. Mackonochie says that at certain times his knee has momentarily touched the ground. This seems to their Lordships to be literally kneeling.

But the case must be put much higher than that, because neither this tribunal nor any tribunal will suffer its orders to be

tampered with by mere evasion; and a mere evasion it would be, to allow a person when ordered not to kneel (for the whole gist and purport of the order, as I shall presently show, being the kneeling by way of reverence) to say, "I did all that I could do towards so kneeling; I bowed my knee; I nearly touched the ground with it; I did not quite touch the ground, but I did it in such a manner that all my congregation, all who were attending and seeing that which I did, could not possibly tell whether I were kneeling in that sense or not." It would be intolerable to allow any order to be trifled with in such a manner as must be implied if their Lordships were to give place for a moment to any such argument on the part of Mr. Mackonochie as that this was a compliance with the order.

Now, with reference to this particular matter of kneeling, it is one, undoubtedly, of very great importance as regards the judgment which has been pronounced, and the occasion of that judgment. We cannot do better, with reference to this part of the subject, than to call attention to the purport and intent of the Book of Common Prayer, when prescribing what is to be done, and in omitting to prescribe that which it does not intend to be done. For that purpose I will refer to the judgment which was pronounced by Lord Cairns, as the judgment of the Judicial Committee on the former occasion (1). His Lordship thus expresses himself: "Their Lordships are of opinion that it is not open to a minister of the Church, or even to their Lordships, in advising her Majesty, as the highest Ecclesiastical Tribunal of Appeal, to draw a distinction, in acts which are a departure from or violation of the Rubric, between those which are important and those which appear to be trivial. The object of a Statute of Uniformity is, as its preamble expresses, to produce an 'universal agreement in the public worship of Almighty God,'—an object which would be wholly frustrated if each minister, on his own view of the relative importance of the details of the service, were to be at liberty to omit, or add to, or alter any of those details. The rule upon this subject has been already laid down by the Judicial



Committee in *Westerton v. Liddell* (7), and their Lordships are disposed entirely to adhere to it: 'In the performance of the services, rites, and ceremonies ordered by the Prayer Book, the directions contained in it must be strictly observed; no omission and no addition can be permitted.'" And then upon this very subject matter his Lordship further proceeds to say,—“There would indeed be no difficulty in shewing that the posture of the celebrating minister during all the parts of the Communion Service was, and that for obvious reasons, deemed to be of no small importance in the changes introduced into the Prayer Book at and after the Reformation. The various stages of the service are, as has already been shewn, fenced and guarded by directions of the most minute kind, as to standing and kneeling,—the former attitude being prescribed even for prayers, during which a direction to kneel might have been expected. And it is not immaterial to observe that whereas in the first Prayer Book of King Edward the VIth, there was contained at the end a Rubric in these words:—‘As touching kneeling, crossing, holding-up of hands, knocking upon the breast, and other gestures, they may be used or left as every man’s devotion serveth, without blame,’—this Rubric was in the second Prayer Book of Edward the VIth, and in all the subsequent Prayer Books, omitted.”

We may further add an observation as to the extreme care which is taken in the Prayer Book to guard all persons who might feel a scruple with reference to kneeling at the reception of the Holy Communion from any inference that might thereby be raised in their minds of a nature contrary to that which was intended by the Prayer Book itself to be expressed, namely, any intention of adoration of the holy elements. This is most particularly and carefully guarded against, and the reason for such kneeling is explained, and said to be, “for a signification of our humble and grateful acknowledgment of the benefit of Christ, therein given to all worthy receivers, and for the avoiding of such profanation and disorder

in the Holy Communion as might otherwise ensue.” Then it is explained:—“Yct lest the same kneeling should by any persons, either out of ignorance and infirmity, or out of malice and obstinacy, be misconstrued and depraved, it is hereby declared, that thereby no adoration is intended, or ought to be done, either unto the sacramental bread and wine there bodily received, or unto any corporal presence of Christ’s natural flesh and blood. For the sacramental bread and wine remain still in their very natural substances, and therefore may not be adored: for that were idolatry, to be abhorred of all faithful Christians.”

And again, carefully does our Church provide in her 28th Article against any such adoration as we have spoken of by this declaration—“The sacrament of the Lord’s Supper was not by Christ’s ordinance reserved, carried about, lifted up, or worshipped.”

Now that being so, and it being of the utmost importance that for the purposes of common prayer such union should be preserved as is essential to the happiness and comfort of all who are joining in this most holy ordinance, what can be a greater offence than the offence of either by addition or omission occasioning trouble or confusion in the minds of those who are invited to join in common prayer, and in one common act of reverence? Acts of reverence, where necessary, are enjoined; and the use of additional acts of reverence, where they are not enjoined, is, according to the judgment which has been pronounced in this very matter, a thing prohibited.

If, therefore, the reverend respondent, in performing his own special act of reverence, does it in such a manner that no one can tell whether he is not doing the very thing which he is prohibited from doing, and has performed that special act of reverence at a time when there is no direction in the Book of Common Prayer for that performance, he certainly does that which militates, in every possible view of the case, both in letter and spirit, against the monition which he has received, and the reasoning which occasioned that monition to be issued.

(7) Moore’s Special Rep. 187.

Whether or not Mr. Mackonochie can reconcile it with his view of what is right, that a judgment of this kind should be so narrowly scrutinised, that every possible limit should be placed upon it, and that notwithstanding the reasons which are assigned for it, namely, the desire of promoting uniformity in common worship, it should be, as far as possible, evaded, it is not for their Lordships to say. There may be some who feel great grief and sorrow at any act which may appear to be at variance with the common charity and love that should induce us at all times when assembled for worship, and most especially this highest and holiest act of worship, to be as far as possible of one mind, so that then at least our unity be not disturbed.

But what one is justified in saying, as regards the act which is now complained of as a breach of the monition, is this: that it is not possible, happily, to reconcile with the administration of our law in its narrowest sense, any mere evasion of that which the law sanctions, of that which the law has ordered, by an authority which binds this reverend gentleman, as it binds every subject of the realm, to strict obedience. That obedience may be rendered grudgingly, if so it must be; it may be rendered in a manner which I am sure the reverend gentleman would not tolerate on the part of any of his flock, if it were a question of obedience to a higher power; it may be rendered, therefore, strictly within the limits which are exactly prescribed by the monition, but that monition may not be evaded. A mere literal compliance is not all that even the law requires; the compliance must not be literal in a sense which is but evasive.

I will not, in the name of their Lordships, say more upon what I confess presses upon me individually very strongly, the narrowness of obedience shewn by the course taken, as to keeping the candles lighted until the very moment when they are forbidden, and then extinguishing them; and as to the elevation of the elements to something which, even on the affidavits themselves, appears to me to be more than necessary for simply taking the

cup and paten into the hands of the officiating clergyman, since we have been obliged to hold that these acts were, nevertheless, in literal compliance with the monition having reference to the Articles.

But here, in this matter of the kneeling, their Lordships find that there is, first, not even a literal compliance with the order; and secondly, if, upon any strained interpretation of the word "kneeling" (for strained as it appears to their Lordships it would be), they could arrive at the conclusion that it did not preclude the act of bowing one knee so low that it must at times touch the ground, and in a manner which cannot possibly be distinguished from kneeling by those who witness the act; still, if it was a representation of the forbidden act, as nearly as the party charged dared to represent it, and in such a guise as to convey to all at a distance the impression that the act of kneeling was really performed, that would be a species of evasion of the order which a Court of Justice would find it right and due to the maintenance of its own force and vigour to visit as being itself a breach of the order which had been made.

For these reasons it has seemed to their Lordships (and it is the opinion of us all) to say that there has been a clear breach of this special monition.

Their Lordships next take into consideration what is proper and right to be done. They did not hear Mr. Stephens upon the question as to whether or not this tribunal has the means of enforcing its orders. Happily, it has been supplied (and I say "happily," because it would be in vain to establish a tribunal which has no power to enforce its orders) with abundant means for that purpose by the statutes which have been passed in that behalf; but into the examination of those means, and the different modes that might be adopted for that purpose, we are not, for the reason I am presently going to mention, about to enter. In declining to take any more severe step than that of compelling Mr. Mackonochie to pay the costs of this discussion, their Lordships have had to consider the affidavit which was last made by him, and to which they

have been desirous to give the most favourable construction and allowance; and in that affidavit Mr. Mackonochie very properly says that he never intentionally or advisedly, in any respect, disobeyed the monition, or sanctioned any practice contrary to its provisions. I confess I think, as I have already intimated, that Mr. Mackonochie takes an extremely narrow view of that which the word "obedience" ordinarily implies, when he says that he has endeavoured to obey this order, but he does say that which, in a sense, for the purpose of clearing his contempt, he may have a right to claim the benefit of, that he never intentionally or advisedly, in any respect, disobeyed the monition.

He now, we hope, will learn that mere literal compliance in a merely evasive manner will not suffice. Literal compliance with regard to the actual limits of the order is, of course, all that he is held to in law; for an obedience to the spirit of the order, we can only trust to his own feelings and his own conscience. And when he thus tells us that it has not been, and is not his desire wilfully to disobey the law, or to disregard its monition, their Lordships think that they are bound, upon the first occasion of the matter being brought before them of any non-compliance with the order, to allow Mr. Mackonochie the benefit of that affidavit; and they do not think it necessary on the present occasion to do more, after expressing their opinion judicially that the monition has been disobeyed with reference to kneeling during the prayer of consecration, than to mark their disapprobation of such a course of proceeding by directing that he should pay the costs of the present application.

Their Lordships make no further order.

---

Proctors, Moore & Currey for appellant; the respondent in person.

---

[IN THE CHANCERY COURT OF YORK.]

1869. }  
Dec. 1, 2. } NOBLE v. VOYSEY.\*

*Articles charging heresy—Reforming—  
Formularies of the Church contravened—  
The Homilies—Pleading.*

*Articles exhibited against a clergyman for maintaining, &c., doctrine contrary to that of the Church of England, after charging that the doctrine complained of was contrary to certain Articles of Religion, and certain parts of the Book of Common Prayer and of the Homilies, set out the particular Articles and portions of the Prayer Book, and proceeded as follows—“The doctrines, positions, or teachings, declared and taught in which said Articles of Religion, parts of the Book of Common Prayer, and Formularies of the said Church, are also more largely expressed in the godly and wholesome doctrine necessary for these times, contained in the following passages from the 1st and 2nd Book of the Homilies, namely, &c.”:—Held, that the articles might be admitted to proof in the above form.*

This was a suit instituted under the Church Discipline Act, 3 & 4 Vict. c. 86, against the Rev. Charles Voysey, Vicar of Healaugh, in the county and diocese of York, for maintaining or affirming and promulgating doctrines contrary to the Articles and formularies of the Church of England, in a work published in London, entitled “The Sling and the Stone,” being a collection of sermons preached by Mr. Voysey in Healaugh church.

The Bishop of London, on the application of the promoter, issued a commission to enquire into the grounds of the charge; and the Commissioners having reported that there was *prima facie* ground for further proceedings, the case was sent, by letters of request from the Archbishop of York, as ordinary of the diocese in which Healaugh is situated, to the Chancery

---

\* Before Granville Harcourt Vernon, Esq., M.A., Vicar-General and Official Principal of the Court of Appeal of the Province of York.

Court of York, the Court of Appeal of the province; and articles were subsequently exhibited in that Court against the defendant.

The articles, after setting out certain passages of the work in question, charged that in those passages the defendant had "maintained or affirmed, and promulgated doctrines contrary, or repugnant to, or inconsistent with certain of the Articles of Religion, certain parts of the Book of Common Prayer, and certain portions of the 1st and 2nd Books of Homilies." They then set out the particular Articles and parts of the Book of Common Prayer alleged to be contravened, and proceeded as follows—"The doctrines, teachings, or positions, declared and taught in which said Articles of Religion, parts of the Book of Common Prayer, and formularies of the said Church, are also more largely expressed in the godly and wholesome doctrine necessary for these times, contained in the following passages from the 1st and 2nd Books of the Homilies, namely, &c." (setting out the passages).

The promoter having moved that the Articles be admitted to proof,—

*Mr. Voysey* in person moved, *inter alia*, that they should be reformed by striking out every passage referring to the Homilies, on the ground that the Homilies were not binding on the clergy, the doctrines contained in them being expressly declared by the 35th Article of Religion (1) to be necessary for the times when the Articles were framed, and that it was not to be inferred thence that they are necessary for the present time.

*Archibald* and *Cowie*, for the promoter, contended that he was entitled to refer to

(1) "The 2nd Book of Homilies, the several titles whereof we have joined under this Article, doth contain a godly and wholesome doctrine, and necessary for these times, as doth the former Book of Homilies, which were set forth in the time of Edward the Sixth; and therefore we judge them to be read in churches by the ministers, diligently and distinctly, that they may be understood of the people."

the Homilies in explanation of the Articles of Religion, and that to this extent the Homilies (where not inconsistent with the Articles themselves) constituted a standard of doctrine—*Bishop of Salisbury v. Williams* (2); and that the proper mode in which reference may be made to the Homilies is that indicated in the 11th Article of Religion "On justification," which states "that we are justified by faith only is a most wholesome doctrine, and very full of comfort, as more largely is expressed in the Homily of Justification."

(They also referred to *Sheppard v. Bennett* (3), where the same form of pleading was allowed by Sir R. J. Phillimore.

*Cur. adv. vult.*

On the following day, Dec. 2—

THE OFFICIAL PRINCIPAL admitted the articles to proof in the above form, saying that he saw no reason for making any reformation whatever in them.

*Articles admitted accordingly.*

Proctors—in the appeal, Moore & Currey; solicitors, J. B. Lee, for promoter; Shaen & Roscoe, for defendant.

#### [IN THE COURT OF ARCHES.]

1869. } THE BISHOP OF WINCHESTER  
Nov. 19. } v. WIL.

*Abatement of Suit—Office of Judge voluntarily promoted by Bishop of Diocese—Resignation of See by Bishop—Amendment of Title.*

*The Bishop of the diocese in which the accused clerk held preferment sent the cause in the first instance, by letters of request, to the Court of Arches. The Court accepted the letters of request, and issued a decree calling upon the defendant to appear. The defendant appeared, and after the articles*

(2) 1 N.R. 199, per Dr. Lushington, D.A.

(3) In the Arches Court of Canterbury, reported *ante* p. 1.

*had been brought in and admitted, the Bishop, who was the promoter of the cause, resigned his see:—Held, that the cause had not abated by reason of such resignation, and leave was granted to amend the title of the cause by altering the designation of the promoter.*

This was a cause or business of the office of the Judge promoted by the late Bishop of Winchester against the Rev. R. H. E. Wix, M.A., a clerk in holy orders, Vicar of the ecclesiastical Parish of St. Michael and All Angels, Swanmore, in the Isle of Wight, in the county of Southampton and diocese of Winchester, for having offended against the laws ecclesiastical.

The case was sent in the first instance to the Court of Arches, under the provisions of the Church Discipline Act (3 & 4 Vict. c. 86), by letters of request, dated the 14th of May, 1869, signed by the then Bishop of Winchester, the voluntary promoter of the cause. The Court accepted the letters of request, and issued a decree or citation calling upon the defendant to appear. The defendant's proctor entered an appearance on his behalf, and after the articles had been brought in and admitted, the said Bishop of Winchester duly and canonically resigned his see. His resignation was accepted, on the 29th October, 1869, by the Archbishop of Canterbury, his ecclesiastical superior, and on the 11th November, 1869, the Queen, by an order in Council, declared the see of Winchester to be vacant.

The matter now came before the Court on an act on petition, dated the 12th November, 1869, which was brought in by the defendant. It set forth the above facts, and alleged that by reason of the resignation of the Bishop of Winchester, and of the said see being then vacant, the cause had abated and come to an end, and prayed that the defendant might be dismissed from further observance of justice therein.

The proctors for the promoter, in answer to the act on petition, denied that the cause had abated as alleged, and prayed the Court to reject the prayer of the defendant, and to order the title of the cause to be amended by describing the promoter

as the Right Rev. Charles Richard Sumner, D.D., late Lord Bishop of Winchester.

A. Charles, for the defendant, submitted that it was by virtue of his episcopal capacity the Bishop had promoted the suit, and that the effect of his resignation upon the proceedings was the same as if he were dead. The proceedings resembled proceedings at common law; and by the common law a suit instituted by a Bishop abated by his resignation—*Comyn's Digest*, tit. Abatement, H. 46. It was in the discretion of the Court to allow the title of the cause to be amended, but the case was one in which that discretion ought not to be exercised.

Dr. Deane (with him Dr. Tristram) for the promoter.—The rules of common law procedure do not apply to this Court. It is true the suit was sent here by the Bishop in his episcopal capacity, by letters of request, but as soon as the letters of request were accepted by this Court, the Bishop was *functus officio*—*Maidman v. Malpas* (1). Dr. Sumner is, however, still the promoter of the suit, and all that is necessary is that the Court should allow a formal amendment to be made in respect of title.

SIR R. J. PHILLIMORE.—In this case there are two applications before the Court—one on behalf of the clerk accused of an ecclesiastical offence, that the Court will pronounce the suit to have abated by reason of the Bishop of Winchester, who originally promoted it, having ceased to occupy his see of Winchester; the other on behalf of the promoter of the office of the Judge, that the Court will allow the title of the cause to be altered by striking out the description of the bishop, and substituting the "Right Rev. Charles Richard Sumner, D.D., late Lord Bishop of Winchester." The question is novel in practice, because the registrar, after careful search, has been unable to find any direct precedent; but it is not difficult, I think, to decide according to principle. The subject for the consideration of the Court to day is naturally divided into these two

(1) 1 Hag. Cons., 205, 208.

heads—First, has the Court any discretion to exercise at all upon the matter? and, secondly, if it has any discretion, how ought that discretion to be exercised? Mr. Charles, who has put the matter clearly and ably on behalf of his client, has pressed upon the Court certain analogies of common law in respect of criminal charges and accusations. But I remember what was said by Lord Wensleydale, delivering the judgment of the Privy Council in *Sherwood v. Ray* (2), that the proceedings of the Ecclesiastical Courts are not governed by the rules of the common law, or any analogies which they furnish; and certainly I should be very loth to adopt the analogy of the common law at a time when it was in its most defective condition, and on points in which it has undergone, in deference to common sense and justice, very considerable reformation. I must dismiss, then, those analogies altogether from my consideration.

It is necessary to state shortly the exact state of the proceedings before me at which the applications are made. The case was sent to this Court, by letters of request, by the late Bishop of Winchester. It rested with him, in the exercise of his episcopal office, to determine whether the suit should proceed or not, and in what manner. It was optional with him to cause his office to be promoted before himself, or to send the case by letters of request to be heard before this Court, either appointing a private person (his secretary, for instance) to carry on the proceedings in his own name, or by appearing himself as a voluntary promoter of the office of the Judge. He has exercised his discretion by adopting the latter course. This discretion he had exercised before he resigned his see, and as soon as this Court became properly in possession of the cause, the bishop in his official capacity had no longer any control over the proceedings. Having sent the case by letters of request to this Court under the statute 3 & 4 Vict. c. 86, and having resolved upon that mode of conducting the criminal suit, the Court, according to the recent decision of the Privy Council, had no option left it but

to accept the letters of request. Well, the Court accepted the letters of request, and issued a decree, which being served upon the party, brought him before the Court, and at this moment the Court has before it the promoter of the office of the Judge and the accused clerk. It is true that the late bishop is the promoter of the cause, but, as I have said, a private person might, with his sanction, have acted as the promoter. Further, the promoter of the office of this Court must not be confounded with the promoter of the office of the Bishop of Winchester; and the cause being now in this Court, it is the office of the Archbishop of Canterbury, acting through the Court, and not the office of the bishop, that is being promoted. The question, therefore, when it is so stated, becomes, as it appears to me, one of extreme simplicity, and it is simply this: whether the promoter of the office of the Court, having, from the circumstance of his resignation of the see of Winchester, undergone a change of designation or title, the Court shall allow the cause to go on with that change of designation inserted in it, or dismiss the cause altogether? I don't know if I have a discretion to exercise in this matter; but I am certain that if I have, it ought to be exercised, both for the interests of the Church and upon the principles of common justice in a case of this description, by refusing to allow a technical objection of this kind to be sustained, and by granting the application for the alteration of the title of the cause. And that is the decision at which the Court has arrived.

I must dismiss the defendant's petition. I order the title of the cause to be amended according to the prayer of the promoter. A new proxy must be given in Bishop Sumner's own name.

---

Proctors—Moore & Currey, for promoter; G. H. Brooks, for defendant.

---

[IN THE COURT OF ARCHES.]

1870. } THE OFFICE OF THE JUDGE  
 Jan. 10, 11. } PROMOTED BY BISHOP SUM-  
 Feb. 3. } NER v. WIX.

*Church Discipline Act—Rites and Ceremonies—"Gospel Lights"—Use of Lighted Candles on "Re-table" during Celebration of Holy Communion—Incense.*

*In a proceeding under the Church Discipline Act, the defendant, a clerk in orders, was charged with having caused or permitted two lighted candles to be held, one on each side of the priest, when reading the Gospel, such lighted candles not being then required for the purpose of giving light:—Held, an addition to the rites or ceremonies prescribed by the law, and therefore unlawful.*

*It was proved in a proceeding under the Church Discipline Act, that the defendant, a clerk in orders, during the celebration of the Holy Communion, used lighted candles which were placed on a "re-table," being a piece of furniture distinct from and standing behind the Holy Table, when such lighted candles were not wanted for the purpose of giving light; and that he also used incense for censuring persons and things immediately before and after the celebration of the Eucharist:—Held, that the use of the lighted candles was illegal, whether regarded as falling under the category of "ceremonies" or "ornamenta;" and that the use of the incense was also unlawful, as being subsidiary and preparatory to the celebration of the Holy Communion.*

This was a cause sent in the first instance to the Court of Arches, under the provisions of the Church Discipline Act (3 & 4 Vict. c. 86) by letters of request, dated the 14th of May, 1869, signed by the then Bishop of Winchester, the voluntary promoter of the cause. The defendant appeared, and after the articles had been brought in and admitted, the Bishop of Winchester duly and canonically resigned his see. The title of the cause was thereupon amended (see *Winchester v. Wix* (1), and it now came on for hearing before the Dean of the Arches.

*Dr. Deane*, with him *Dr. Tristram*, for the promoter.

*A. Charles* for the defendant.

The facts and arguments are stated in the judgment, which was delivered on the 3rd of February as follows:—

SIR R. J. PHILLIMORE.—In this case the office of the judge is promoted by the late Bishop of Winchester against the Rev. Richard Hooker Edward Wix, vicar of St. Michael and All Angels, Swanmore, in the Isle of Wight.

The case comes before this Court by letters of request from the diocese of Winchester, and Bishop Sumner having ceased to be bishop of the see of Winchester, continues to be the promoter of the suit.

The defendant is charged with the ecclesiastical offences of adding to the ceremonies and rites prescribed by the law to be used in church, by the burning of lights and the use of incense.

The charges with respect to the burning of lights are contained in the following articles:—

"3rd. That the said Richard Hooker Edward Wix, in the church of the said perpetual curacy or vicarage of St. Michael and All Angels, Swanmore, on the following Sundays, to wit, on the 7th day of February, on the 28th day of March, on the 18th day of April, and on the 23rd day of May, all in the year 1869, used lighted candles on the communion table in the said church, or on a ledge or shelf immediately above the said communion table, the said ledge or shelf having the appearance of being affixed to and forming part of the said communion table, during the celebration of the Holy Communion at times when such lighted candles were not required for the purpose of giving light, and permitted and sanctioned such use of lighted candles."

"5th. That the said Richard Hooker Edward Wix, in the said church on the following Sundays, to wit, on the 28th day of March, on the 18th day of April, and on the 23rd day of May, all in the year 1869, used lighted candles placed in candlesticks standing on each side of the communion table during the celebration of the Holy Communion, at times when such lighted candles were not required for the purpose of giving light, and per-

E

(1) *ante*, 22.

NEW SERIES, 39.—ECCLES.

mitted and sanctioned such use of lighted candles."

"7th. That the said Richard Hooker Edward Wix, in the said church, on Sunday, the 28th day of March, 1869, caused or permitted two lighted candles to be held, one on each side of the priest when reading the Gospel, such lighted candles not being then required for the purpose of giving light."

I will deal with the last article first, because it is admitted on behalf of the promoter that the practice therein complained of has been *de facto* discontinued by Mr. Wix since the service upon him of a monition by the bishop, dated the 3rd of April in last year, and before the commencement of this suit; at the same time Mr. Wix contends that the practice is lawful, and the judgment of the Court is prayed by the promoter thereupon.

I am of opinion that the practice charged in this article is unlawful, as an addition to the rites or ceremonies prescribed by the law. I am glad, therefore, that Mr. Wix obeyed the monition of his ordinary, and must admonish him not to return to the use of this practice.

With respect to the charge contained in the 3rd article, Mr. Wix offers the following defence in his responsive plea (3rd article):—

He says the charge against him—

"Is in part untruly pleaded, for he alleges that on the said days in the said third article mentioned, the said lighted candles were not placed on the communion table, or on a ledge or shelf immediately above the same as therein alleged, but upon a certain other table called a re-table, the said re-table standing distinct and separate from, and not forming or appearing to form part of, and not being affixed or appearing to be affixed to the said communion table."

And he denies that the use of such lighted candles is an unlawful addition to, or deviation from, the forms prescribed by the law.

With respect to the charge in the 5th article, the defendant admits the fact to be true as stated, but makes a similar denial with respect to the law.

The charges with respect to the un-

lawful use of incense are contained in the following articles:—

"9th. That the said Richard Hooker Edward Wix, in the said church on the following Sundays, to wit, on the 7th day of February, on the 28th day of March, on the 18th day of April, and on the 23rd day of May, all in the year 1869, used incense for censuring persons and things in and during the celebration of the Holy Communion, or as subsidiary thereto, and permitted and sanctioned such use of incense."

The defendant in his responsive plea (article 9) denies that he on the days in the article mentioned used incense for censuring persons and things in and during the celebration of the Holy Communion, or as subsidiary thereto, or permitted or sanctioned such use of incense as in the said article alleged. And the defendant further says that he used, and permitted, and sanctioned the use of incense on the days in the said article mentioned not for censuring persons or things nor in or during the celebration of the Holy Communion, nor as subsidiary thereto, but for other and lawful purposes.

"11th. That the said Richard Hooker Edward Wix, in the said church on the following Sundays, to wit, on the 7th day of February, on the 28th day of March, on the 18th day of April, and on the 23rd day of May, all in the year 1869, used incense in and during the celebration of the Holy Communion, or as subsidiary thereto, and permitted and sanctioned such use of incense."

As to this article, the defendant in his responsive plea (art. 11) denies that he on the days in the said 11th article mentioned used incense in and during the celebration of the Holy Communion, or as subsidiary thereto, or permitted and sanctioned such use of incense.

"13th. That the said Richard Hooker Edward Wix, in the said church, on the following Sundays, to wit, on the 7th day of February, on the 28th day of March, on the 18th day of April, and on the 23rd day of May, all in the year 1869, used incense during Divine Service, or as subsidiary thereto, and permitted and sanctioned such use of incense."

As to this article, the defendant in his



responsive plea (art. 13) denies that he used or permitted or sanctioned the use of incense on the days in the said 13th article mentioned, during Divine Service, or as subsidiary thereto, but he admits that he used incense in a proper and lawful manner on the said days.

"15th. That the said Richard Hooker Edward Wix, in the said church, on the following Sundays, to wit, on the 7th day of February, on the 28th day of March, on the 18th day of April, and on the 23rd day of May, all in the year 1869, ceremonially used incense, and permitted and sanctioned such ceremonial use of incense."

As to this article, the defendant in his responsive plea (art. 15) denies that he on the days in the said article mentioned used incense ceremonially, or permitted or sanctioned such ceremonial use of incense.

It appears from the evidence that what is called the re-table is a separate and distinct piece of furniture from the holy table; that it is placed behind the holy table; and that the ledge or shelf of it, to use the words of the witness, "appears like a mantle-piece" over the holy table; that on this re-table stood two large candles and twelve branch candles, and that on each side of the holy table there stood a large candlestick which rested on the ground. All these candles were lighted at the time and in the manner which I will now state. And I may remark that the counsel for Mr. Wix admitted very properly that the evidence given by the witness Cooper was substantially correct, and did not cross-examine him. It appears from his evidence that after the third collect for grace had been said, then there was a sermon; after which the remaining prayers were said, concluding with the apostolic benediction. After this the candles were lighted by a chorister; there was a procession by the minister and choir then formed, and they went from the church to the vestry. After which, another procession came from the vestry with censers and incense burning, went to the holy table, where the priest stirred up the incense, and censed all the things on the re-table and holy table, while he himself was censed by a boy behind him. After which the censers and incense were

carried by a boy into the vestry, accompanied it should seem by one of the priests, another priest remaining at the holy table. After the communion service was over the censers were again fetched from the vestry; another procession was formed, and the lights were extinguished. There were no lighted candles on the holy table itself; there was no incense burning during the time of the celebration of the Eucharist. Between the close of the morning prayers and the beginning of the communion service some of the congregation left the church and other persons came in, and a bell was rung to denote that the communion service had begun. These four facts which are proved in the case are much relied upon by the counsel for Mr. Wix as materially differing the present case from that of *Martin v. Mackonochie* (2); so much so as to make this present case one *primæ impressionis*.

It has been forcibly contended that the two judgments of *Martin v. Mackonochie* (2) and *Liddell v. Westerton* (3) are irreconcilable in principle, and that I ought to follow the doctrine laid down in the former, and not in the latter case. If, indeed, the duty were cast on me of demonstrating that the two decisions were in every respect harmonious as to the principle on which they proceeded, I might perhaps, though I do not say that I should, find the task a difficult one to execute, more especially with respect to the weight apparently given to the injunctions of Edw. VI. in *Liddell v. Westerton*, and their entire rejection in *Martin v. Mackonochie* (2), when they were relied upon for the purpose of showing that the burning of two candles to represent the true light of the world was illegal. But I am happy to think that no such duty is imposed upon me in the present case. The lights which were burnt in this case were not upon the holy table or "high altar," and therefore are unaffected by the injunctions; and the lighting and the burning of them in the manner and the circumstances proved appears to me to fall under the category of ceremonies. Nor are they, in the language

(2) 38 Law J. Rep. (N.S.) Eccles. 1; s.c. 2 Law Rep. P.C. 365.

(3) Moore's Special Report.

of the Privy Council in *Martin v. Mackonochie* (2), "inert and unused," but things actively employed as a part of a ceremony, and are therefore illegal according to my own decision in the same case. It is not necessary that I should pass any opinion upon the legality of these things, if they were decorations, and neither "ornaments" nor ceremonies. It will be remembered that the candles were lit and burning during the whole of the Communion Service.

Now with respect to the use of incense, the principal defence is that it was employed during an interval between two services, and neither belonged to nor was subsidiary to either. I cannot take this view of the state of facts which is proved by the evidence. I think the fair result of that evidence is that incense was used in the interval between two services which would otherwise have immediately succeeded each other; almost the same congregation was present at both services and in the interval between them. It is true that after the incense had been removed a bell was rung to signify that the second service was about to begin; but looking at all the circumstances I think it would be unreasonable and unjudicial not to conclude that the burning of the incense was intended to be subsidiary and preparatory to the celebration of the Holy Communion. I am bound therefore to pronounce that the use of the incense as well as the lighting and burning of the candles according to the facts admitted to be proved in this case, were illegal acts, and that Mr. Wix ought to have obeyed altogether, as he did partially, the monitions of his ordinary, which are set forth in the articles, and I must admonish him to abstain from such practices for the future, and I must condemn him in the costs of this suit.

---

Proctors—Messrs. Moore & Currey, for promoter;  
Mr. G. H. Brooks, for defendant.

---

[IN THE COURT OF ARCHES.]

1869.  
Nov. 27, 29. }  
1870. } ELPHINSTONE & PURCHAS.  
Feb. 3. }

*Church Discipline Act—Rubrics, Construction of—Vestments—Holy Communion, Administration of—Wine mixed with Water—Wafer Bread—Rites and Ceremonies.*

*The ornaments of the minister, to which the present rubric refers, are those mentioned in the first Prayer Book of Edward 6, and no ecclesiastical censure can attach for their use in the prescribed manner in the performance of divine service. They are, for ministers below the order of bishops, and when officiating at the Communion Service, cope, vestment or chasuble, surplice, alb and tunicle; in all other services the surplice only, except that in cathedral churches and colleges the academical hood may be also worn. The cap called a "biretta," though not mentioned, may be worn by the minister as a decent protection to the head when needed.*

*Provided that the mingling be not made at the time of the celebration, so as to constitute a new rite or ceremony, it is lawful for the minister to administer wine mixed with water, instead of wine, to the communicants at the Lord's Supper.*

*The rubric directs that the bread used in the administration of the Holy Communion shall be broken by the priest during the course of the prayer of consecration, but it does not require that the bread so used should be of any particular shape. The bread may be "wafer bread," or bread made in the special fashion and shape of circular wafers.*

*It is contrary to the 82nd canon, and has no warranty in primitive use or custom, to leave the holy table without any decent covering during divine service, even though there should be no administration of the Holy Communion.*

*It is contrary to the rubric, viz., that which precedes the Lord's Prayer at the beginning of the Communion Service, for the minister to read the collects next before the epistle for the day in the Communion Service, standing in front of the holy table, with his back to the people, or, while reading the collects following the creed, to stand*

*in front of the middle of the holy table at the foot of the steps leading up to the same, with his back to the people; and though, perhaps, not governed by any positive order in a rubric, it is contrary to the intent of the Prayer Book for the minister to read the epistle in the communion service with his back to the people, the epistle not being a prayer addressed to God, but a portion of the Scripture read to the people.*

*The minister has no warranty in the Prayer Book for announcing the celebration of the holy communion as a "high celebration of the holy eucharist," or for giving notice of holy days other than those which the Church has directed to be observed, and which are to be found after the preface of the Prayer Book, under the head of "A Table of all the Feasts that are to be observed in the Church of England throughout the year."*

*Rites and ceremonies falling within the judgments in Martin v. Mackonochie and Flamank v. Simpson.*

This was a proceeding under the Church Discipline Act (3 & 4 Vict. c. 86) brought by letters of request from the Bishop of Chichester into the Court of Arches. It was promoted by Charles James Elphinstone, of Brighton, in the county of Sussex, a colonel in Her Majesty's army, against the Rev. John Purchas, clerk, perpetual curate or minister of St. James's Church or Chapel, at Brighton, in the county of Sussex, and diocese of Chichester, and province of Canterbury. The defendant did not appear to the citation, and the proceedings were carried on *in panam*.

The charges articulated against the defendant are fully set out in the judgment. The most serious of them related to the wearing of certain vestments, viz., copes, chasubles, albs with patches called apparels, tippets of a circular form on the shoulders, gold stoles, coloured stoles, dalmatics, tunics or tunicles, and caps called "birettas," by the defendant and by other officiating ministers with his consent during the celebration of divine service.

The case was heard during Michaelmas Term last, and occupied the Court two days (27th and 29th of November).

A. J. Stephens (with him Dr. Tristram,

Archibald, and B. Shaw), for the promoter.

*Cur. adv. vult.*

On the 3rd of February judgment was given as follows:—

SIR R. J. PHILLIMORE.—This case comes before me by Letters of Request from the Bishop of Chichester. The decree by Letters of Request was served on Mr. Purchas on the 9th of October, and the case was heard during last term. Mr. Purchas has not appeared to the citation, and the proceedings have therefore been carried on *in panam*. I deferred my judgment, in order to consider the various authorities that were cited and the arguments adduced by counsel,—a burden which pressed the more heavily upon the Court, inasmuch as the case was heard *ex parte*,—and also because some of the same points were raised in a proceeding against Mr. Wix, which was argued before the Court at the beginning of this term, and in which I have just given judgment.

Mr. Purchas is perpetual curate of the perpetual curacy of St. James' Chapel in the parish of Brighton. The benefice is created by an Act of Parliament, 7 Geo. 4. c. 3, which enacts that the repairs shall be executed by a particular person, and that the bread and wine for the Holy Communion shall be provided by the perpetual curate, but contains no provisions as to churchwardens. The chapel and the perpetual curate are made subject to the ordinary jurisdiction of the Lord Bishop of Chichester. The incumbent of this chapel seems to have no cure of souls. The chapel itself, with a certain portion of the pews and seats, and the rents, profits, and proceeds, are by the statute vested in a person of the name of Nathaniel Kemp, his heirs and assigns (§ 9). The promoter of the office of the judge in this case is described as a colonel in Her Majesty's army, and as "of Brighton;" but I do not remember that it appeared that he is a member of the congregation of the chapel, or in any way connected with it.

The suit, like the preceding one against Mr. Wix, is in form criminal; and the articles are 44 in number; they underwent some reformation; and now I think the articles of charge are contained in 35

of them. They accuse the defendant of various ritual acts and observances, which are said to contravene the Acts of Uniformity, the Canons, and the general law of the Church. They enter into minute details and specifications,—some of a character extremely trivial, which it is impossible not to regret should ever have occupied the time of this Court; but others are of a graver character.

With respect to the evidence given before me in proof of these articles, I think it enough to say that it has been sufficient, with occasional exceptions, which I have noticed in its proper place, substantially to support them.

The most serious matter is that which relates to the wearing of certain vestments by Mr. Purchas and by other officiating ministers with his consent during the celebration of divine service. The articles which contain these charges are as follows:—

“XXXIV. That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, on several occasions (to wit, etc.) used and wore a certain vestment called a cope while performing morning prayer, or parts of the service appointed for morning prayer, and before commencing the Communion Service as officiating minister. That you also, on several occasions (to wit, etc.) while present in the said church or chapel, and responsible as perpetual curate or minister thereof for the due performance of divine service therein, sanctioned and authorized the wearing of a cope by other officiating clergymen while performing morning prayer, or parts of the service appointed for morning prayer, and before the commencement of the Communion Service.

“XXXV. That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, on several occasions (to wit, etc.) used and wore a certain vestment called a cope while performing evening prayer, or parts of the service appointed for evening prayer, as officiating minister; and also on several occasions (to wit, etc.) while present in the said church, and being responsible, as perpetual curate or minister thereof, for the due performance of divine service

therein, sanctioned and authorized the wearing of a cope by other clergymen while performing evening prayer, or parts of the service appointed for evening prayer, as officiating ministers.

“XXXVI. That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, on several occasions (to wit, etc.) used and wore a vestment called a chasuble while officiating in the Communion Service and in the administration of the Holy Communion, and on the said days and times, while present in the said church and yourself officiating, and while responsible, as perpetual curate or minister thereof, for the due performance of divine service therein, sanctioned and authorized the wearing of a chasuble by other clergymen while also officiating in the Communion Service and in the administration of the Holy Communion in the said church or chapel.

“XXXVII. That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, on divers occasions (to wit, etc.) caused or suffered certain clergy, forming part of the clergy then officiating or taking part in the ceremonial of divine service at morning prayer, to wear certain other vestments—to wit, albs with patches called ‘apparels,’ and also to wear tippets of a circular form on their shoulders, instead of such surplices or surplices and hoods as are accustomed to be worn, and on Sunday, February the 7th, 1869, and Good Friday, 1869, you, the said Rev. John Purchas, yourself wore such tippet, as aforesaid.

“XXXVIII. That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, on divers occasions (to wit, etc.) at evening prayer wore a scarlet stole embroidered with crosses over your surplice, and at morning service, on Tuesday, February the 2nd, 1869, wore a gold stole over a garment called an alb, and have usually within two years last past worn a stole of some colour during divine service in your said church or chapel. That on divers occasions (to wit, etc.) you caused or suffered certain of the clergy officiating or assisting at the Communion Service, in

your presence, in the said church or chapel, to wear certain other vestments (to wit, dalmatics, tunics or tunicles, and albs) instead of surplices, and you yourself also, at such times, when officiating in the Communion Services, have worn a certain vestment (to wit, an alb) instead of a surplice, and you yourself also then wore, and caused or suffered to be worn by other officiating clergy, a girdle, amice, and maniple; and you also on divers occasions (to wit, on Sunday, February the 28th, 1869, and on divers other days within two years last past) wore, and caused or suffered certain of the other clergy officiating or assisting at the Communion Service to wear, a stole crosswise, that is to say, crossed over the breast, and you also wore or bore in your hand, and also caused or suffered to be worn or borne in the hand in your presence by other officiating clergy in the said church or chapel on divers occasions a certain cap or covering for the head called a biretta.

"XXXIX. That the said vestments in this last and in the four next preceding articles mentioned were worn, on the several occasions therein mentioned, as a matter of ceremony by the said clergy whilst so officiating, and were, as a matter of ceremony, of divers colours, and some of them (to wit, the said copes, chasubles, and stoles) of gandy and variegated colours, the particular hue and pattern of the same being varied, as a matter of ceremony, according to the days and times on which the same were so worn."

The rubric (for I shall use this expression for the sake of clearness), which it is admitted contains the law as to the vestments of the bishop, priest, and deacon, is as follows:—

"And here it is to be noted that such ornaments of the church, and of the ministers thereof at all times of their ministration, shall be retained and be in use as were in this Church of England by authority of Parliament, in the second year of the reign of King Edward the Sixth."

As to the construction of this Rubric, according to the general principles of legal interpretation, I must say that, after a repeated and attentive perusal of the language, it does *per se* appear to me as plain and simple as any which is to be

found in any statutory enactment. Lord Coke says that "*loquendum est ut vulgus*" is to be assumed as the principle which underlies the language of enactments; and I really do not believe that any person of plain common sense and ordinary intelligence who reads this language, uninfluenced by considerations arising from supposed consequences, would hesitate as to the interpretation of it. He would say, with the Privy Council in *Liddell v. Westerton*, it "obviously" meant that the same ornaments which were used in the first and second years of Edward VI. "may still be used." He would perfectly understand why the Puritan party objected to this Rubric, "Forasmuch as this Rubric seemeth to bring back the cope, albe, etc., and other vestments forbidden by the Common Prayer Book, 5 & 6 Edw. 6th, and so our reasons alledged against ceremonies under our eighteenth general exception, we desire it may be wholly left out;" and why the House of Lords should at the same time suggest as a consideration, "whether the Rubric should not be mended, where all vestments in time of divine service are now commanded, which were used 2 Edward VI."—(Cardwell's Conferences, pp. 274, 314.)

And I am convinced that, if the subject to which the language refers were not one which excites some of the strongest passions and feelings of our nature, but was one of an ordinary indifferent and civil character, no dispute would ever have been raised with respect to the plain and natural meaning of that language. Much ingenuity has been exerted to shew that the obvious meaning is not the true one, and in fact that not only the structure of the sentence must be altered, but other words must be introduced into it before it can receive a legitimate construction. Accordingly it has been argued before me that the rubric in question ought to be read as if the words were as follows:—"That all ornaments which were in use at the time when Charles II.'s Act of Uniformity was passed were henceforth to be retained and used, if they were likewise contained in the First Book of Edward VI." It is not too much to say that, before such interpretation can be legally adopted, the departure from the

"obvious" meaning of the language employed must be demonstrated to be required by the nature of the subject to which it is applied ; and I am thus brought to another consideration, namely, as to the difficulty which is, so to speak, imported from without, or, in other words, the supposed consequences which would flow from the obvious rendering of the language. The consequences which would follow upon the use of the particular vestments specified in the First Prayer Book of Edward VI. would, it is alleged, be the restoration of Roman ceremonies in the Church of England, abhorrent to the principles on which her reformation was conducted. In the judgment in *Martin v. Mackonochie* (1), I stated at considerable length, citing a great number of authorities in support of the position, what I conceived to be the true legal *status* of the Church of England with respect to her doctrines and her ceremonies ; namely, that as to both, she had regard to the undivided Church, and to primitive and Catholic doctrine and usage, rejecting those novelties and additions which the Curia of Rome had from time to time imposed upon its subjects. To all that I said upon this matter in the case of *Martin v. Mackonochie* (1) I steadily adhere. I do not find that any contrary position was laid down by their Lordships of the Judicial Committee of the Privy Council, and it is a satisfaction to me to be able to add to this list of authorities before cited by me, that of the present Bishop of Ely, who, in his recent charge, places the position of our Church upon a similar foundation.

That very learned prelate says :—

"The Reformation here, at least, was intended to be, and in the main became, not a lawless throwing off of lawful authority, not a wanton division from the body of the Church of Christ, but rather a firm and reverent maintenance of the right of each national church to minister its own laws and discipline, and to regulate its own faith and worship, specially when other churches refused reformation, and an external force strove to suppress and smother the cry for it wherever it was raised. We denied, and we still deny,

(1) 37 Law J. Rep. (N.S.) 17 Eccles. Cas. ; s. c. 2 Law Rep. 117 A. & E.

that this was schism ; we did not separate from the churches of France or Spain, or Germany or Italy."—(*Charge*, p. 59.)

And again :—

"I have tried to turn your thoughts to the earliest ages of the Christian faith ; you well know that the professed principle of the English Reformation was, a recalling of faith and a readjusting of ceremonial to the pattern, as far as possible, of the primitive church."—(*Ibid.* p. 90.)

It is a mistake in law, as well as in history, to conceive that the position of the Church of England with respect to the Roman Church can be ascertained by citations of the violent vituperations to be found during the heat of religious conflict in the writings of some extreme reformers—many of whom upon examination will be found to be just as hostile to the present doctrines and ceremonies of England as they were at that time to those of Rome. And this remark is especially applicable to foreign reformers whose churches were constructed on a different basis from that of the Church of England, though perhaps it is not impertinent to observe, that the gorgeousness of the vestments and the ritual which the Scandinavian reformers were not afraid to leave to their church, far exceeds any that was contemplated by the First Prayer Book of Edward VI.

The principal vestments complained of in this case afford a strong illustration of the truth of my general remark : they are mentioned in the first Prayer Book as a "vestment" and a "cope." And when it was argued that the cope could not be legally worn by Mr. Purchas, because it was symbolical of Roman error and corruption, it was admitted that it was specially retained by the existing law as proper, if not absolutely necessary, to be worn in cathedral and collegiate churches. The surplice itself, which it is now contended ought to be worn instead of these vestments, was, and I believe is now, considered by the Presbyterians as one of the worst rags of Popery which the Church of England has retained.

And here, perhaps, it is not irrelevant to advert to the language of Hume, in describing the state of parties in England on the eve of the great Rebellion :—

"But the grievances which tended chiefly to inflame the Parliament and nation, especially the latter, were the surplice, the rails placed about the altar, the bows exacted on approaching it, the liturgy, the breach of the Sabbath, embroidered copes, lawn sleeves, the use of the ring in marriage, and of the cross in baptism. On account of these," he adds (I am not now concerned with the justice of his censure), "were the popular leaders content to throw the Government into such violent convulsions; and, to the disgrace of that age and of this island, it must be acknowledged that the disorders in Scotland entirely, and those in England mostly, proceeded from so mean and contemptible an origin."—*Hume's History of England*, vol. vi. ch. 54, p. 388.)

I dismiss the argument of consequences from my consideration, and proceed to apply the usual canons of interpretation to the rubric before me.

The rubrics in regard of vestments in the first Prayer Book of Edward VI., to which I am referred by the present rubric, were as follows:—

(1.) At the beginning of the Communion Service—

"The Priest that shall execute the holy ministry shall put upon him the vesture appointed for that ministration, that is to say, a *white albe, plain, with a vestment or cope*. And where there be many Priests or Deacons, there so many shall be ready to help the Priest in the ministration as shall be requisite, and shall have upon them likewise the *vestures appointed for their ministry*, that is to say, *albes, with tunicles*."

(2.) At the end of the Communion Service—

"And though there be none to communicate with the Priest, yet these days (after the Liturgy ended) the Priest shall put upon him a plain albe or surplice, with a cope, and say all things at the altar (appointed to be said at the celebration of the Lord's Supper) until after the offertory."

(3.) At the end of the Book of Common Prayer, after the exposition "of ceremonies":—

"In the saying or singing of matins and evensong, baptizing, and burying, the

minister, in parish churches or chapels annexed to the same, *shall use a surplice*; and in all cathedral churches and colleges, the archdeacons, deans, provosts, masters, prebendaries, and fellows, being graduates, *may use in the choir, besides their surplices, such hoods as pertaineth to their several degrees which they have taken in any university within this realm*; but in all other places every minister shall be at liberty to use any surplice or no. It is also seemly that graduates when they do preach should use such hoods as pertaineth to their several degrees. And whensoever the bishop shall celebrate the Holy Communion in the church, or execute any other public ministration, he shall have upon him, besides his rochette, a surplice or albe, and a cope or vestment; and also his pastoral staff in his hand, or else borne or holden by his chaplain."

These rubrics were abolished by the Second Prayer Book of Edward VI., which substituted the following:—

"The minister at the time of the Communion, and at all other times in his ministration, shall use neither alb, vestment, nor cope; but being archbishop or bishop, he shall have and wear a rochet, and being a priest or deacon shall have and wear a surplice only."

All these rubrics, and the services to which they belong, were repealed in the reign of Queen Mary (1 Mar. Sess. 2. cap. 2).

By the next Act of Uniformity (1 Eliz. c. 2. s. 25), it was enacted—

"That such ornaments of the church, and of the ministers thereof, shall be retained and be in use as was in this Church of England by authority of Parliament in the second year of King Edward VI., until other order shall be taken by the authority of the Queen's Majesty, with the advice of Her Commissioners appointed and authorized under the Great Seal of England for causes ecclesiastical, or of the Metropolitan of this realm."

Annexed to this statute by s. 2, was the Queen's Prayer Book, the rubric to which was as follows:—

"And here it is to be noted that the minister, at the time of the Communion, and at all other times of his ministration,

F

shall use such ornaments in the church as were in use by authority of Parliament in the second year of the reign of King Edward VI., according to the Act of Parliament set in the beginning of this book."

It will be observed that the words "retained and," which do occur in the Act, were omitted in this rubric; and they do not appear in the rubric of the Prayer Book of King James, which is identical with that of Elizabeth.

It is admitted that on the passing of this statute, the vestments prescribed by the first Prayer-book came into legal use; but it has been contended that Queen Elizabeth exercised the power given her by the statute, and "took other order."

If any such further order were taken in compliance with the statute, it must be in one of four ways:—

(1.) Either by the Injunctions of 1559, or (2) the Advertisements of 1564–5, or (3) the Canons of 1603–4, or (4) the Canons of 1640. Of these four the Advertisements were principally relied upon as the execution of the further order, though the Canons of 1603–4 were also prayed in aid. Before, however, I consider these two modes of execution, I will say a word as to the Injunctions and the Canons of 1640. The Injunctions, which I think must upon the whole be considered as having been issued by the royal authority alone, and as not having statutory authority, do not contain any express order with regard to the vestments; but the archbishop and certain bishops afterwards drew up "Interpretations and further considerations of these Injunctions for the better direction of the clergy;" among which is to be found the following:—

"Concerning the Book of Service."

"First. That there be used only but one apparel; as the cope in the ministration of the Lord's Supper, and the surplice in all other ministrations."—(1 *Cardwell, Doc. Annals*, p. 238.)

With respect to the Canons of 1640, they contain no provision as to the subject of vestments. I come therefore to a consideration of the Advertisements. Those which refer to the present question are as follows:—

"Item. In ministration of the Holy Communion in the cathedral and collegiate churches, the principal minister shall use a cope, with gospeller and epistoler agreeably; and at all others prayers to be sayde at the Communion Table, to use no copes but surpliceses."

"Item. That the deane and prebendaries weare a surpsease with a silke hooede in the quyer; and when they preache in the cathedrall or collegiate church to weare their hooede."

"Item. That every minister sayinge any publique prayers, or ministeringe of the Sacramentes, or other rites of the church, shall weare a comely surpsease, with sleeves, to bee provided at the charges of the parish."—(1 *Cardwell, Doc. Annals*, p. 326.)

The authority usually referred to with respect to these Advertisements is Strype's *Life of Parker* (Vol. i., chap. 20). Cardwell in his *Documentary Annals*, and Hallam in his *Constitutional History* (Vol. i., p. 179, 6th edition), and Collier in his *Ecclesiastical History*, dealing with this question of the Advertisements, refer as to their principal authority to Strype, in the *Annals* (Vol. i., p. 419, folio), and in his *Life of Parker*. And, though by no means always an accurate transcriber, his notes appear to be the fountain from which the history of this matter has been principally derived. Burnet, for instance, relies exclusively upon this authority (*Ref.*, Vol. iii., p. 588). The history of these Advertisements seems to reflect the doubtful state of all church authority at the time when they were issued. The Puritan party were freely condemning and disregarding the rites and ceremonies of the restored church, and by the influence of their patron, the Earl of Leicester, in the Privy Council, were continually thwarting the various orders put forth by the Queen and by the prelates for the purpose of enforcing the uniformity of a decent ritual. The Queen, exasperated by the conduct of the Puritans in 1564, ordered the Archbishop, with the aid of certain other bishops, members of the Ecclesiastical Commission, to draw up certain *Articles* or *Ordinances*, the object of which was to secure as great an amount of decent ritual as the circumstances of the time would



permit. Archbishop Parker and some of the bishops drew up the articles required ; but, says Strype, "because the book wanted the Queen's authority, they thought fit not to term the contents thereof, *Articles or Ordinances*, by which names they at first went, but by a modest denomination, viz., *Advertisements*." The Queen, it is probable from conflicting motives, partly from the influence of Leicester, and partly from an apprehension of weakening the rubric which referred to the second year of Edw. VI., refused her official sanction to these *Advertisements*, and as I think Dr. Cardwell correctly states,—

"Left them to be enforced by the several bishops on the canonical obedience imposed upon the clergy, and the powers conveyed to the Ordinaries by the Act of Uniformity. Their title and preface certainly do not claim for them the highest degree of authority ; and although Strype infers from certain evidence which he mentions (Parker, Vol. i., p. 319) that they afterwards received the royal sanction, and recovered their original title of *Articles and Ordinances*, it seems more probable that they owed their force to the indefinite nature of episcopal jurisdiction, supported, as in this instance was known to be the case, by the personal approval of the Sovereign."—*Cardwell's Doc. Ann.*, Vol. i., p. 322.)

Collier observes that—

"The '*Advertisements*' were checked at present by the interposing of the Earl of Leicester, of Knolles, and some other court patrons of the Dissenters ; however, afterwards they recovered their first title of *Ordinances*, and were given in charge at a metropolitical visitation in the year 1576."—(*Collier's Eccles. Hist. of Great Britain*. Ed. 1840. Vol. vi., p. 399.)

"A loud outcry," says Mr. Lathbury (*History of Book of Common Prayer*, p. 72, note 9), "was raised by the Puritans against the *Advertisements* as though some rites had been imposed, whereas they were only intended to enforce such as were already in use, because some of the clergy were lax in their practice. They were allowed by the Queen to be published, but not under Her Majesty's authority ; consequently they never possessed the same force as the *Injunctions*. As, however,

they are quoted in the 24th Canon, they are still of some importance. Long after, in this reign, we find the Puritans objecting to the cope as in general use. 'Doe not the people think a more grievous fault is committed if the minister doe celebrate, etc., without a surplesse or a cope, than if the same through his silence should suffer an hundred souls to perish.' (*Parte of Register*, 45.) The cope is mentioned frequently in the same work (62, 84.)" I cannot find that Archbishop Parker, anxious as he was to enforce these *Advertisements*, ever said or wrote that they were issued under the authority of the statutes.

I think the fair result of the history derived from printed books on the subject is, that the Queen never gave her official or legal sanction to these "*Advertisements*," but allowed them to be issued by the prelates with the assurance that they had her personal sanction ; and I may add that, to the best of my belief, no legal treatise of authority, and no judgment of a court of justice has ever yet pronounced that these "*Advertisements*" were issued under the conditions which the statute of Elizabeth required.

It is said, however, that though it has been hitherto supposed that these *Advertisements* were issued without the observance of the conditions prescribed in the statute, and therefore illegally, that recent discoveries in the State Paper Office have brought to light documents which establish that these conditions were complied with, and that the *Advertisements* had therefore statutable authority. I am unable to draw so large an inference from the manuscript document, copied from the State Paper Office, which has been submitted to me. It does not seem to me to do more than contain a recital in an informal document, "that the *Advertisements* were sett out by Her Majesties authoritee," which would not carry the matter further, I think, than the reference to them in the 24th Canon, "according to the *Advertisements* published Anno 7 Eliz." or, as the Latin version has it, "*juxta admonitiones in septimo Elizabethæ promulgatas*." It is impossible to conceive that the authority which published these Canons was not perfectly aware both of the fact and law

relating to these Advertisements, and the manner in which they are referred to would rather lead to the inference that they were not at that time considered to have *per se* a statutable authority. But this point does not appear to me to be of much importance, so far as the present case is concerned, for two reasons,—First, there are no prohibitory words, such as were contained in the Rubric to the second Prayer Book of Edward VI., with regard to the ornaments of ministers,—and this omission is worthy of notice,—for the gloss which all ecclesiastical history, contemporaneous and subsequent, would give to the Advertisements is, that they provided that the ornaments of the minister should not fall below a certain point; not that it should exceed that point. The object of the Advertisements was to give notice that the minimum of ornament mentioned in them would be enforced by authority, just as, with regard to the vestment of the Holy Table, the 82nd Canon prescribed that it should be “covered with a carpet of silk or other decent stuff,” and Dr. Lushington held that this excluded other vestments of the altar,—but their Lordships observed in *Liddell v. Westerton* (2):—

“Next as to the embroidered cloths, it is said that the Canon orders a covering of silk, or of some other proper material, but that it does not mention, and therefore by implication excludes more than one covering. Their Lordships are unable to adopt this construction. An order that a table shall always be covered with a cloth surely does not imply that it shall always be covered with the same cloth, or with a cloth of the same colour or texture. The object of the canon seems to be to secure a cloth of a sufficiently handsome description, not to guard against too much splendour” (*Moore*, p. 188).

This view that, where it was intended to prohibit as well as to prescribe, express words of prohibition were used, is further confirmed by the language of the Advertisements themselves; for instance, the Advertisement which relates to prayers to be said in the cathedral at the Holy Table, when there is no celebration of the Eucharist;—

(2) *Moore's Special Report.*

“Item in ministration of the Holy Communion in the cathedrall and collegiate churches, the principall minister shall use a cope with gospeller and epistoler agreeably, and at all other prayers to be sayde at the Communion Table to use no copes but surplices.”—(1 *Cardwell, Documentary Annals*, p. 326.)

It was more faintly argued that, even if the Advertisements did not execute the power given by statute, the Canons of 1603–4 had this effect. Upon this argument it is to be observed, in the first place, that they contain no prohibitory words; and it is upon this very ground that one of them as I have already said, which gave directions as to the covering of the Holy table, was held by the Privy Council not to be exhaustive, or to exclude the use of other coverings. In the second place, it is, to say the very least, questionable whether the words “by the authority of the Queen’s Majesty,” with the approval of the particular persons mentioned therein, could confer any power upon the succeeding monarch. And, thirdly, the Canons of 1603–4 were made in Convocation with the consent of the Crown and under the statute of Henry VIII. (35 Hen. VIII. c. 19), and were the creatures of the distinct ecclesiastical legislature known to the constitution of this country; and it seems to me impossible to hold, because the Crown ratified what the Convocation did, that a Canon so enacted by Convocation under the statute of Henry VIII. could be an execution of a power under a totally different statute: And it is moreover fatal to the argument, that the Metropolitan was not a member of this Convocation, as appears by the recital in the Crown’s writ prefixed to the Canons, the Bishop of London presiding during the vacancy of the see. Lastly, and this remark applies equally to the Advertisements, unless the words “be retained,” are to have a special construction put upon them—a subject which I will presently consider—a subsequent statute, which expressly revived a prior statute inconsistent with the Advertisements of Queen Elizabeth, would, by necessary implication, repeal them.

I have already observed that the words “be retained” are in the statute, though not in the Prayer Book of Elizabeth. Now

is there any reason for supposing that this variance was intentional or significant? or was the variance accidental and insignificant, because the words were treated as an amplification of the words "be in use"? I think the last is the true solution, and certainly the Privy Council in *Liddell v. Westerton* (2) were of this opinion; they had to construe the words "be retained" as well as the words "be in use"; they drew no distinction between the two expressions; they did not rule that the ornaments of the Church could not be legal unless they satisfied the double condition, of being in use at the time when the rubric of Charles II. became law, and also of their being prescribed by the Prayer Book of Edward VI. On the contrary, referring to the difference of language between the statute and the rubric of Elizabeth, they said:—

"It will be observed that this rubric does not adopt precisely the language of the statute, but expresses the same thing in other words. The statute says, 'such ornaments of the Church and of the ministers thereof shall be retained and be in use,' the rubric, 'that the minister shall use such ornaments in the church.'"—(Moore, p. 159.)

In truth, there would be an insuperable difficulty in satisfying the supposed condition that the ornaments must have been *de facto* in use; for what ornaments were in use at the time of the Restoration? The churches had been for many years in the possession of the Presbyterians—where they had not been driven out by the Independents; neither Catholic doctrine nor ritual could be found in the churches until after St. Bartholomew's day.

Nor is the difficulty lessened if the condition be interpreted to imply that the ornaments must be *de jure* in use; that would take us back, passing over the Protectorate of Cromwell, to the last year of Charles I.'s reign, that is, if my observations as to the Advertisements and Canons are correct, to the Elizabethan Act of Uniformity, and would give a meaning to the words "be retained" in Charles II.'s rubric, which it is admitted they had not in Elizabeth's Act of Uniformity.

Bearing in mind the importance of the question, I have endeavoured not to shrink

from any part of the arduous duty which has devolved upon me. But I am bound to say that I think this rubric has already received a construction from an authority which is binding upon me. It has been twice considered and elaborately reviewed by the Judicial Committee of the Privy Council, first in the case of *Liddell v. Westerton* (2), secondly, in the case of *Martin v. Mackonochie* (3), and in both instances precisely the same construction was put upon it.

In *Liddell v. Westerton* (2) the language was as follows:—

"Their Lordships, after much consideration, are satisfied that the construction of this rubric which they suggested at the hearing of the case is its true meaning, and that the word 'ornaments' applies, and in this rubric is confined to those articles the use of which in the services and ministrations of the Church is prescribed by the Prayer Book of Edward the Sixth."

"The term 'ornaments' in ecclesiastical law is not confined, as by modern usage, to articles of decoration or embellishment, but it is used in the larger sense of the word *ornamentum*, which, according to the interpretation of *Forcellini's Dictionary*, is used '*pro quocumque apparatu, seu instrumento*.' All the several articles used in the performance of the services and rites of the Church are 'ornaments'; vestments, books, cloths, chalices, and patens, are amongst Church ornaments; a long list of them will be found extracted from Lyndwood, in Dr. Phillimore's edition of *Burn's Ecclesiastical Law*, vol. i., pp. 375–7. In modern times organs and bells are held to fall under this denomination.

"When reference is had to the First Prayer Book of Edward the Sixth, with this explanation of the term 'ornaments,' no difficulty will be found in discovering amongst the articles of which the use is there enjoined, ornaments of the church, as well as ornaments of the ministers. Besides the vestments differing in the different services, the rubric provides for the use of an English Bible, the new Prayer Book, a poor man's box, a chalice, a cor-

(3) 38 Law J. Rep. (N.S.) Eccles. 1; s. c. Law Rep. 2 P.C. 365.

poras, a paten, a bell, and some other things."—(*Moore*, pp. 156-7.)

In *Martin v. Mackonochie* (3) their Lordships say:—

"The construction of this rubric was very fully considered by this Committee in the case of *Westerton v. Liddell*, already referred to; and the propositions which their Lordships understand to have been established by the judgment in that case may thus be stated:—

"First, the words 'authority of Parliament' in the rubric refer to and mean the Act of Parliament 2 & 3 Edward VI., c. 1, giving parliamentary effect to the first Prayer Book of Edward VI., and do not refer to or mean Canons or Royal Injunctions, having the authority of Parliament, made at an earlier period.

"Second, the term 'ornaments' in the rubric means those articles, the use of which, in the services and ministrations of the Church, is prescribed by that Prayer Book.

"Third, the term 'ornaments' is confined to these articles.

"Fourth, though there may be articles not expressly mentioned in the rubric, the use of which would not be restrained, they must be articles which are consistent with, and subsidiary to, the services; as an organ for the singing, a credence table from which to take the sacramental bread and wine, cushions, hassocks, &c.

"In these conclusions and in this construction of the rubric, their Lordships entirely concur."

It certainly would seem at first sight that these judgments have made my course plain. I have, in obedience to them, but to inquire whether these "ornaments of the minister" are to be found in the first Prayer Book of Edward VI.; if they are, to pronounce them legal,—if not,—illegal.

Two objections are raised to the application of the plain and clear language of these judgments to the present case, first, it is said that the question of the ornaments of the minister was not directly before the Court in *Liddell v. Westerton*, but only the ornaments of the church; and this is literally true; but how little can it avail to prevent the application of the same rule to both kinds of ornament. The reasoning covers equally both kinds

of ornament. The common rules of grammar and sense require that I should not divide a sentence and apply a predicate, equally applicable to both subjects contained in it, to one only. I am not at liberty, if I were so inclined, to question the judgment as to the ornaments of the Church, nor would it become me to express any doubt as to the logic on which it is built. I am bound to follow where that judgment leads me; and if so, I must on the like premises arrive at the like conclusion.

Secondly, it is objected that the words "shall be retained" modify the application of the judgment in *Liddell v. Westerton* (2) to the case before me.

But in what way do these words produce this effect? Because they are equally applicable to both classes of ornaments, and must have been fully considered by the Privy Council in both the judgments, and in neither was any attempt made to lay a particular stress upon them, much less to attach to them the important consequences with which it is now sought to make them pregnant.

I must not omit to notice the argument drawn from the Visitation Articles since the statute of Charles II., and the alleged *contemporanea expositio* afforded by them, and by the fact of the non-usage of the vestments in question. First, as to the Visitation Articles, the same principle applies to them as to the Advertisements and Canons, and indeed as to every attempt to procure a decent ritual since Queen Elizabeth's time; namely, that the authorities were content to order the minimum of what was requisite for this purpose, having, for the reasons which I have explained in my former judgment in *Martin v. Mackonochie* (1), great difficulty in obtaining even that minimum. And so with regard to the argument as to the legality of a church-rate for objects of ritual, I have nothing to add to the observations which I made in that case as to the insufficiency of this argument. Nor is it necessary to repeat what was said in that case, and the preceding case of *Liddell v. Westerton* (*Moore*, p. 172), that no amount of desuetude can repeal the obligations of a statute, much less render its provisions unlawful. But it has been

urged that the admitted disuse, till within a very recent period, of these ornaments since the Restoration affords a *contemporanea expositio* which removes all doubt as to the meaning of the rubric. In the first place, this argument implies that the words of the rubric are such as to raise a doubt, whereas in themselves the words are perfectly plain and clear. In the second place, the disuse is practically accounted for by the circumstances to which I have just adverted in dealing with the argument from the visitation articles. In truth, however, the argument is bad from the vice of proving a great deal too much; the same argument would make the copes in the cathedrals unlawful, which it is admitted they are not; the use of the surplice in preaching unlawful, which is the proper dress; and *à converso* would establish the legality of the use of the black gown, which has no warrant of law; and would render unlawful the credence table, and this last ornament affords a special illustration of the inapplicability of this argument. At the time of the decision in *Liddell v. Westerton*, the credence table had been universally disused; I believe there were not half a dozen exceptions throughout England; and this disuse had led to a continued and universal violation of the rubric, in placing the elements upon the holy table before the commencement of the service, which, as their lordships observed, was "certainly not according to the order prescribed." Their lordships, therefore, disregarded this usage, and sanctioned the credence table, because it enabled the provisions of the rubric to be executed. And so the doctrine of the *contemporanea expositio* was strongly urged against the lawfulness of the cross, either as an ornament or as a decoration; the disuse of it in the Church of England was clearly established, but their lordships thought that the circumstances of the time fully accounted for this, and in spite of their proved disuse in the churches of this country, said, "That crosses, as distinguished from crucifixes, have been in use, as ornaments of churches, from the earliest periods of Christianity; that when used as mere emblems of the Christian faith, and not as objects of

superstitious reverence, they may still lawfully be erected as architectural decorations of churches."—(*Moore*, p. 175.)

Nor upon this head is it to be omitted that, though the effect of this rubric in bringing back the vestments of Edward VI. had been pointed out by the Puritans in Charles I.'s time, as I have stated, no denial of this consequence was ever given by the authorities on behalf of the church; and that subsequently to the date of this rubric no judicial authority, no legal commentator, has questioned the effect of this rubric in legalizing the vestments of the second year of Edward VI.

Burn, in the third volume of his *Ecclesiastical Law*, after reciting the rubric in the present Prayer Book, proceeds as follows:—

"Therefore it is necessary to recur in this matter to the Common Prayer Book established by Act of Parliament in the second year of King Edward VI., in which there is this rubric:—'In the saying or singing of *matens* and *evensonge*, *baptyzmg* and *burying*, the minister in paryshe churches, and chapels annexed to the same, shall use a *surples*. And in all cathedrall churches and colledges the archdeacons, deanes, provestes, maisters, prebendaryes, and fellowes, beinge graduates, may use in the quiere, beside theyr surplesses, such hoodes as pertaineth to their severall degrees whiche they have taken in any universitie within this realme. But in all other places every minister shall be at libertie to use any surples or no. It is also seemly that graduates, when they dooe preache, should use suche hoodes as pertayneth to theyr severall degrees.'

"So that in marrying, churching of women, and other offices not here specified, and even in the administration of the Holy Communion, it seemeth that a surplice is not necessary. And the reason why it is not enjoined for the Holy Communion in particular is because other vestments are appointed for that ministration, which are as followeth:—'Upon the day, and at the time appointed for the ministracion of the Holy Communion, the priest that shall execute the holy ministry shall put upon hym the vesture appointed for that ministracion, that is to

say, a white *albe* plain, with a vestment or *cope*. And where there be many priestes or deacons, there so many shall be ready to helpe the priest in the ministracion as shall be requisite, and shall have upon them likewise the vestures appointed for their ministry, that is to say, *albes*, with *tunacles*.'"

"NOTE.—The *albe* differs from the surplice in being close-sleeved.

"'And whensoever the byshop shall celebrate the Holye Communion in the church, or execute any other publique ministracion, he shall have upon him, beynde his rochette, a surples or *albe*, and a cope or vestment, and also hys pastoral staffe in hys hand, or elles borne or holden by hys chaplyne'" (p. 437).

Mr. Stephens, in his elaborate edition of the Book of Common Prayer, published for the Ecclesiastical History Society, after citing the foregoing rubrics, says :—

"All the rubrics just quoted were omitted in 1552, and never appeared again. The only rubric respecting ornaments in the second Common Prayer Book of Edward VI., confirmed likewise by Act of Parliament, was directed against the use of the cope and pastoral staff. These ornaments, however, were again introduced by the rubric of 1559, which brought us back not to the second book of Edward VI., but to the first. And this rubric of 1559, slightly altered, was a second time authorized at the last review.

"Copes were worn at Durham and Westminster till the middle of the last century, and copes are worn now by the bishops at the coronations ; indeed all the directions contained in the first book of Edward VI., as to the ornaments of the church and of the ministers thereof at all times of their ministracion, are by Stat. 14 Car. 2. c. 4, the statute law of the Anglican Church."—(Vol. i., p. 367.)

In October, 1864, a Commission under the Clergy Discipline Act was issued by the late Bishop of Exeter, to inquire into certain charges against the curate of Helston, the principal one being the use of the surplice in preaching. The Bishop, in his judgment upon this point, after stating the several statutes and rubrics, says :—

"From this statement it will be seen

that the surplice may be objected to with some reason ; but then it must be because the law requires 'a white *albe* plain, with a vestment or cope.' Why have these been disused ? Because the parishioners—that is the churchwardens, who represent the parishioners—have neglected their duty to provide them ; for such is the duty of the parishioners by the plain and express canon law of England (*Gibson*, 200). True it would be a very costly duty, and for that reason, most probably, churchwardens have neglected it, and archdeacons have connived at the neglect. I have no wish that it should be otherwise. But, be this as it may, if the churchwardens of Helston shall perform this duty, at the charge of the parish, providing an *albe*, a vestment, and a cope, as they might in strictness be required to do (*Gibson*, 201), I shall enjoin the minister, be he who he may, to use them. But until these ornaments are provided by the parishioners, it is the duty of the minister to use the garment actually provided by them for him, which is the surplice."

This judgment will be found reported in Mr. Stephen's Book of Common Prayer (Vol. i., p. 377), and in his *Ecclesiastical Statutes* (Vol. ii., p. 2046).

I do not know how I can better close my observations upon this subject than by reciting the language of the Privy Council in *Liddell v. Westerton* (*Moore*, p. 159) :—

"The rubric to the Prayer Book of January 1st, 1604, adopts the language of the rubric of Elizabeth. The rubric to the present Prayer Book adopts the language of the statute of Elizabeth ; but they all obviously mean the same thing, that the same *dressess* and the same utensils or articles which were used under the first Prayer Book of Edward VI. may still be used."

I am of opinion that the plain words of the statute, according to the ordinary principles of interpretation, and the construction which they have received in the two judgments of the Privy Council, oblige me to pronounce that the ornaments of the minister mentioned in the first Prayer Book of Edward VI. are those to which the present rubric referred ; and

I cannot therefore pass any ecclesiastical sentence against Mr. Purchas for wearing them.

The next question is, What are these ornaments?

They are, for ministers below the order of bishops, and when officiating at the Communion Service, cope, vestment or chasuble, surplice, alb, and tunicle; in all other services the surplice only, except that in cathedral churches and colleges the academical hood may be also worn. The other vestments worn by Mr Purchas, and the cope at any other time but the Communion Service, are unlawful, and may not be worn. It is unlawful, therefore, for Mr. Purchas to wear or authorize to be worn, a cope at morning or at evening prayer; albs with patches called apparels, tippets of a circular form, stoles of any kind whatsoever, whether black, white, or coloured, and worn in any manner; dalmatics and maniples, which latter ornament, it appears from the evidence, was worn on one occasion by one of the officiating clergymen, though it does not appear that Mr. Purchas wore one himself. As to the girdle and the amice it is not proved that Mr. Purchas wore them or suffered them to be worn.

With respect to the covering or cap called a "biretta," which Mr. Purchas was proved to have carried in his hand, and a clergyman to have worn in a procession, it appears to me as innocent an ornament as a hat or a wig, or as a velvet cap, which latter is not uncommonly worn by bishops, clergy, and laity as a protection to the head when needed. The 74th Canon, which is still in force, and which enjoins decency of apparel to ministers when out of their houses, provides that "no ecclesiasticall persons shall weare any coife or wrought night-caps, but onely plaine night-caps of blacke silke, sattin, or velvet." And the 18th Canon provides that "no man shall cover his head in the church or chappell in the time of divine service, except he have some infirmity, in which case let him wear a night-cap or coife," which word "night-cap" is not to be understood as a covering worn in bed, but as a kind of close-fitting cap, as is shown by the words in the Latin Canons, "*pileolo aut ricâ*."

NEW SERIES, 39.—ECCLES.

And I do not pronounce this particular kind of black cap, called a biretta, so worn, to be unlawful.

With respect to the colour of the vestments, which I have pronounced to be lawful, the rubric is silent, except in the case of the alb and surplice; and the expert in such matters, who was produced as an authority by the promoter, deposed that the vestments which were used in Mr. Purchas's church were in every respect such as were in use in the Church in the second year of Edward VI.

There are various charges relating to particular kinds of processions organized by Mr. Purchas in his church, which I will now deal with; they are to be found in the following articles:—

"IV. That you, the said Rev. John Purchas, on the several occasions in this article hereinafter mentioned, in the said church or chapel of St. James's, Brighton (to wit, &c.), immediately before, but at the hour appointed for the commencement of the prayers appointed to be read at morning and evening service respectively, and *without any break or interval, and as connected with and being the beginning of and a part of the rites and ceremonies of public worship on the said several occasions*, in the presence of the congregation then assembled in the said church or chapel of St. James's, Brighton, for the purpose of hearing divine service, formed, or caused to be formed, a procession composed of a thurifer carrying an incense-vessel containing incense, swinging the same; a crucifer bearing a crucifix, or large cross, with a figure of the Saviour thereon; two acolytes, or boys dressed in red and white, with red skullcaps on their heads, and bearing lighted candles; several deacons, or other persons, bearing one or more silk banners, with a cross or other device embroidered on each of such banners; divers choristers dressed in red and white; a person, called a ceremoniarus, in cassock and cotta, with blue tippet; two persons, called rulers of the choir, in copes; you, the said Rev. John Purchas, and the other officiating minister of the day, in copes; that the procession so formed proceeded round the said church or chapel of St. James's, singing a certain hymn, being No. 100 of the hymns contained in a book

G

called 'Words of the Hymnal noted,' or some other hymn from the same book; and that immediately on the return of each of such processions on each of the said several occasions to the choir, the prayers for the day were commenced; and that on a certain other occasion, to wit, on Sunday, February the 28th, 1869, immediately after the benediction at evening service, and *without any break or interval, and as connected with and forming the conclusion of and part of the rites and ceremonies of public worship*, formed, or caused to be formed, a like procession to the one immediately herein-before mentioned, and proceeded therewith round the said church, singing as aforesaid in the presence of the congregation assembled."

"XIV. *That you then*,"—that is, after doing certain acts, which fall under another category, and which I will consider presently—"formed or caused to be formed a procession consisting of a thurifer with his incense vessel containing incense, the crucifer with a large crucifix, acolytes or boys with lighted candles, the person called ceremoniarus, an assistant minister, and you, the Rev. John Purchas, in a cope, followed by several members of the congregation each with a lighted candle; that the procession so formed proceeded round the interior of the said church or chapel singing; that thereupon afterwards you, the said Rev. John Purchas, took off your cope, and wearing a white alb with gold stole and chasuble, proceeded to the Communion Table and, after being yourself censured, commenced the Communion Service, during the reading of which the congregation extinguished their candles. That after the collect and epistle had been read the said candles were, during the reading of the Gospel, again lighted and were then again extinguished, each of the acts in this article hereinbefore set forth, being of the nature of and intended by you as and constituting a religious ceremony."

"XXVI. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on the Sunday next before Easter, March the 21st, 1869, at morning service, and during or immediately after the conclusion of morning prayer, and before the commence-

ment of the Communion Service, sprinkled or caused to be sprinkled with so-called holy water, and blessed or consecrated, or caused to be blessed or consecrated, and censured, or caused to be censured, divers palm branches then lying on a table placed near to the Communion Table, and that after the said morning prayer was concluded you caused the said palm branches to be distributed to yourself and to divers other clerks in Holy Orders, to persons of the choir and members of the congregation then and there present in the said church or chapel; and that *you then caused to be formed a procession* in the said church or chapel, with a crucifix borne before it, and consisting of the thurifer, choristers, priests, and others, which said procession then proceeded round the interior of the said church or chapel, chaunting, and elevating the said palm branches, and accompanied with lighted candles; and that on the return of the procession the Communion Service was immediately commenced and proceeded with, the whole taking place in the presence of the congregation then assembled to hear Divine Service as a part of Divine Service, and as a ceremony connected therewith, without break or intermission."

It appears to me, from the evidence, that these particular processions have been so conducted as to constitute a further rite or ceremony in connection with the morning and evening service, and in addition to those prescribed by the rubrics for those services. I must, therefore, placing them under this category, pronounce them illegal.

The following articles, which I have grouped together, contain charges against Mr. Purchas for using, during the time of, or so immediately connected with, the prescribed service as to be practically undistinguishable from it, rites or ceremonies other than and additional to those prescribed in the Book of Common Prayer:—

"V. That on a certain occasion (to wit, &c.) you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, caused a group of acolytes, or attendants, to stand or kneel round you, and a person called the crucifer to



stand by the side of you, bearing a crucifix or gilt cross, with the figure of the Saviour thereon, as a matter of ceremony during the reading by you, the said Rev. John Purchas, of the Gospel in the Communion Service; that on certain other occasions (to wit, &c.), the 'Te Deum' being on each of such occasions sung as a part of evening service immediately after the evening prayers, in the said church or chapel of St. James's, Brighton, aforesaid, the congregation remaining in the said church or chapel during the singing thereof, you, the said Rev. John Purchas, during the singing thereof, caused the said crucifer, with his said crucifix, and the bearers of banners, to stand holding the same as a matter of ceremony near to you, the said Rev. John Purchas, and in front of the Holy Table."

"XIII. That you, the said Rev. John Purchas, did, in the said church or chapel of St. James's, Brighton, aforesaid, on Ash Wednesday, February the 10th, 1869, at morning service, immediately after the conclusion of the Communion, and before commencing the Communion Service (you being then the officiating minister), proceed, as a matter of ceremony in connection with the Divine Service of the day, to take from the Holy Table a certain vessel, previously placed thereon, filled with a black powder being or resembling ashes; and did then bless or consecrate the same, and did then rub a portion of such powder on the foreheads of certain persons, members of the congregation, who then knelt before you for that purpose (to wit, a certain other clergyman then present, the person called the *cere-moniarius*, a person called a ruler of the choir, and certain acolytes, or boys); and did further then publicly invite any other members of the congregation to come forward for the like purpose; after which, none others having come forward, the Communion Service was commenced and proceeded with."

"XIV. That you, the said Rev. John Purchas, on the day of the Purification of the Virgin Mary, February the 2nd, 1869, in the said church or chapel of St. James's, Brighton, aforesaid, in the morning, and when no artificial light was necessary, during the performance of Divine Service,

to wit, while the Litany was being read, censed or caused to be censed, and afterward sprinkled or caused to be sprinkled with holy water, or water previously blessed or consecrated, a number of candles then placed and being on a small table close to the Communion Table, and that you then, after the Litany was finished and before the commencement of the Communion Service, lighted the said candles, and distributed them to divers members of the congregation who then, by your direction or sanction, held up the same so lighted."

The charges contained in the latter part of this article I have already considered.

"XXI. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on divers occasions (to wit, &c.), caused a small bell to be rung divers times during the Prayer of Consecration in the service of the Holy Communion, such ringing being simultaneous and connected with the consecration of the elements, and with the elevation of them, as in the preceding articles mentioned."

"XXII. That you, the said Rev. John Purchas, on several occasions, in the said church or chapel of St. James's, Brighton, aforesaid (to wit, &c.), caused to be said or sung, before the reception of the elements and immediately after the Prayer of Consecration in the Communion Service, the words or hymn or prayer commonly known as 'The Agnus,' that is to say:—'O Lamb of God that takest away the sins of the world, have mercy on us;' which said words are appointed to be said only as a part of the said hymn or prayer at the conclusion of the said service, namely, after the reception of the elements by the communicants is completely ended, and after the Lord's Prayer and the other prayer then appointed and the Gloria have been said, and immediately before the final blessing."

"XXVIII. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on Sunday, March the 14th, 1869, at evening service, and immediately on the conclusion of your sermon, gave notice that on the next day there would be 'a mortuary celebration for the repose of a

sister at eleven o'clock;' and that on Monday morning, March the 15th, 1869, while performing Divine Service in the said church or chapel, namely, while reading the Communion Service, immediately after the collect for the Queen, and before the Epistle, you interpolated and said the following words, that is to say:—'O God! whose property is ever to have mercy and to forgive, be favourable unto the soul of this Thy servant' (thereby meaning the soul of the deceased person for whose repose the said mortuary celebration was made), 'and blot out all her iniquities, that she may be loosed from the chains of death, and be found meet to pass unto the enjoyment of life and felicity through Jesus Christ our Lord. Amen.' After which, 1 Thess. chap. iv., verse 13 to verse 18, was read as the Epistle, and the rest of the service was proceeded with, John chap. vi., verse 37 to verse 40, being read as the Gospel."

"XXXIII. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on Whit Sunday evening, May the 16th, 1869, at the usual hour for, and immediately before the commencement of evening prayer, and in the presence of the congregation then assembled to hear Divine Service, made, received, or admitted a new acolyte or choir boy, by causing him then to kneel on one of the steps before the Holy Table, and reading some words or sentences out of a book, and making the sign of the cross over him, and putting into his hands a candlestick with candle, and afterwards, in like manner, putting into his hands decanters or glass bottles of wine and of water, those actions collectively being intended as and constituting a religious rite or ceremony."

I think these articles are substantially proved; and that in these circumstances the additional rites or ceremonies must be considered as illegal, on the principle of the decision in *Martin v. Mackonochie* (3); and I accordingly admonish Mr. Purchas to abstain from the use or sanction of the particular rites and ceremonies so charged for the future.

I now approach the consideration of a group of articles which have been proved, and which appear to me to be expressly

governed by the judgments in *Martin v. Mackonochie* (3) and *Flamank v. Simpson* (4). They are as follows:—

"VIII. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, did, on the said 8th day of November, 1868, the 17th day of January, 1869, and the 16th day of May, 1869, cense or permit to be censed, during Divine Service, the said crucifix, so placed and standing on the said Holy Table or narrow ledge as in the 6th preceding article mentioned."

"X. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on divers occasions (to wit, &c.) used lighted candles on the Holy Table or Communion Table (or on a ledge immediately over the said table, and appearing and intended to appear part thereof), during the celebration of the Holy Communion, as a matter of ceremony, and at times when such lighted candles were not wanted for the purpose of giving light, and permitted and sanctioned such use of lighted candles."

"XII. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid (on the day, &c.) used incense for censuring persons and things, and for other purposes, as a matter of ceremony, in and during the celebration of the Holy Communion, and also in and during other parts of Divine Service, and there permitted and sanctioned such use of incense."

"XV. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, in and during the Communion Service, on divers occasions (to wit, &c.), during the celebration of the Holy Communion, and as part of the ceremonies thereof, mixed water with the sacramental wine used in the administration of the Holy Communion, and permitted and sanctioned such mixing and the administration to the communicants of the wine and water so mixed."

"XVII. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on divers

(4) 36 Law J. Rep. (N.S.) Eccles. 4 (P.C.) 28; s.c. Law Rep. 1 P.C. 463.

occasions (to wit, &c.), during the prayer of consecration in the Order of the Administration of the Holy Communion, elevated the paten or one of the wafers on the Communion Table for the Holy Communion above your head, and permitted and sanctioned such elevation by the other officiating ministers, and took into your hands the cup and elevated it above your head during the prayer of consecration aforesaid, and permitted and sanctioned the cup to be so taken and elevated, as aforesaid, by the other officiating ministers, and that you also, during such prayer of consecration, knelt or prostrated yourself, and sanctioned such kneeling or prostrating by the other officiating ministers."

"XXIII. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on Whit Sunday morning, May the 16th, 1869, during the Communion Service, as officiating minister, after receiving the alms contributed at the offertory, elevated the same, and then, placing the same for a moment on the Holy Table, did forthwith remove the same and hand them to an acolyte or attendant, who took them away and placed them on the Credence Table, instead of suffering the same to remain on the Holy Table."

The next article seems to me to contain charges undistinguishable in principle from the practices which are condemned in those judgments, and in that which I have just delivered in the case of Mr. Wix. It was duly proved, and is as follows:—

"XI. That you, the said Rev. John Purchas, on Christmas Day, 1868, on the day of the Purification of the Virgin Mary, February the 2nd, 1869, and on Easter Sunday, 1869, used lighted candles standing on and about and before the Communion Table during the performance of other parts of the morning service than the Communion Service, as a matter of ceremony, and when they were not wanted for the purpose of giving light. That you also during the whole of Divine Service on Easter Sunday, 1869, kept a very large lighted candle, called a paschal taper, placed and standing towards the south side of the Communion Table, as a matter of ceremony, and when it was not

wanted for the purpose of giving light. That you also, at various times, during the performance of Divine Service (to wit, &c.), caused acolytes, or attendants, as a matter of ceremony, to bear about, move, set down, and lift up various lighted candles when the same were not needed to give light."

I admonish Mr. Purchas to abstain for the future from doing or sanctioning the acts so charged in these seven articles.

I have now to consider the charge of administering the Holy Eucharist wine with which a little water has been mingled. The article containing this charge is as follows:—

"XVI. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on Whit Sunday, May the 16th, 1869, administered wine mixed with water instead of wine to the communicants at the Lord's Supper."

I had occasion to consider this subject in my judgment in *Martin v. Mackonochis* (1), and I then observed:—"It appears that from a very early period, the precise date is uncertain, a custom prevailed amongst Christians of adding a very small quantity of water to the wine which forms one element of the Blessed Sacrament. This custom, whether it arose from a belief that the wine used by the Jews at the Passover, and by our Lord at the Last Supper, was mingled with water, or from some reason symbolical of his passion, is wholly unconnected with any papal superstition, or any doctrine which the Church of England has rejected. It has the warrant of primitive antiquity and of the undivided church in its favour."

To the authorities there cited I would add this from *Dr. Smith's Dictionary of the Bible*, title "Wine," vol. iii., p. 1778. "The wine was mixed with warm water on these occasions," referring to the Passover, "as implied in the notice of the warming kettle." (Pesach. 7. s. 13.) "Hence in the early Christian Church it was usual to mix the sacramental wine with water, a custom as old, at all events, as Justin Martyr's time (Apol. i. 65)." I also referred to the rubric in the first Prayer Book, and the omission of the order "putting thereto a little pure and

clearwater" in the latter Prayer Books; and I decided that "the ceremony or manual act of mixing the water with the wine during the celebration of the Eucharist" was illegal.

At the same time I added, "I do not say that it is illegal to administer to the communicants wine in which a little water has been previously mixed." At that time I had in my mind, among other authorities, that of Bishop Andrewes, who appears to have used the mixed chalice in the Chapel Royal all the time he was Dean of it, and who in the form that he drew up for the consecration of a church expressly directed it to be used (*Wheatley, Common Prayer*, p. 281); and that of Bishop Cosin, who, speaking of the practice under the Elizabethan Prayer Books, says, "Our Church forbids it not, for aught I know, and they that think fit may use it, as some most eminent among us do at this day." (*Notes on the Book of Common Prayer*, 1st series, p. 154, Works, vol. v.)

The subject is treated of with much learning by Mr. Palmer in his *Origines Liturgicæ*; he says:—"In the Church of England the wine of the Eucharist was always, no doubt, mixed with water. In the canons of the Anglo-Saxon Church, published in the time of King Edgar, it is enjoined that 'no priest shall celebrate the Liturgy unless he have all things which pertain to the Holy Eucharist, that is, a pure oblation, pure wine, and pure water.' In after ages we find no canons made to enforce the use of water, for it was an established custom. Certainly none can be more canonical, and more conformable to the practice of the primitive church. In the English church it has never been forbidden or prohibited, for the rubric which enjoins the priest to place bread and wine on the table, does not prohibit him from mingling water with that wine."—(Vol. ii., p. 76.)

In this opinion, provided that the mingling be not made at the time of the celebration so as to constitute a new rite or ceremony, I agree. I therefore pronounce that Mr. Purchas has not been guilty of a canonical offence in this matter.

The twentieth article charges as follows:—

"XX. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on divers occasions (to wit, &c.), in the administration of the Holy Communion, used wafer bread (being bread made in the special shape and fashion of circular wafers) instead of bread such as is usual to be eaten, and did administer the same to the communicants, that is to say, one such wafer to each of them."

My first observation upon this article is, that it is not proved as laid; the witness Verrall deposed that the bread was in the form of a thin wafer; that he saw it administered to the communicants, but was not sufficiently close to know that what was administered was not a portion of each wafer. The present rubric directs that the priest is to break the bread during the course of the prayer of consecration. There is no evidence before me that the wafer was not broken; and the only question I have to consider is, whether wafer bread, that is, bread in the shape of a wafer, may lawfully be administered.

The rubric which governs this question is as follows:—"And to take away all occasion of dissension and superstition, which any person hath or might have concerning the bread and wine, it shall suffice that the bread be such as is usual to be eaten; but the best and purest wheat bread that may conveniently be gotten." This rubric varies from that of the Second Prayer Book of Edward VI., only by the substitution of the words, "all occasion of dissension and superstition" for "the superstition."

Previously to these rubrics unleavened bread was used in our Church, and this custom was continued by the First Prayer Book of Edward VI., the rubric to which was as follows:—

"For avoiding of all matters and occasion of dissension, it is meet that the bread prepared for the Communion be made, through all this realm, after one sort and fashion, that is to say, unleavened and round, as it was afore, but without all manner of print, and something more larger and thicker than it was, so that it may be amply divided in divers pieces;

and every one shall be divided in two pieces at the least, or more, by the discretion of the minister, and so distributed. And men must not think less to be received in part than in the whole, but in each of them the whole body of Our Saviour Jesus Christ."

It appears, therefore, that while the first rubric prescribed a uniformity of size and material, the later and the present rubric are contented with the order that the purest wheaten flour shall suffice, and the bread may be leavened according to the use of the Eastern, or unleavened according to the use of the Western, Church. The Elizabethan rubric, which is practically the same as the present, received this *contemporanea expositio* from that Queen's Injunctions (A.D. 1559), which were as follows: Item—

"Where also it was in the time of King Edward the Sixth used to have the Sacramental bread of common fine bread, it is ordered for the more reverence to be given to the holy mysteries, being the Sacraments of the body and blood of our Saviour Jesus Christ, that the same Sacramental bread be made and formed plain, without any figure thereupon, of the same finenesse and fashion round, though somewhat bigger in compasse and thicknesse, as the usuall bread and wafer" (variously printed water), "heretofore named singing-cakes, which served for the use of the private masse."—(*Annotated Book of Common Prayer*, p. 198.)

And in 1570 Archbishop Parker wrote as follows to Sir W. Cecil:—

"January 8, 1570.

"Sir,—Where upon the return of my Lord of London from the court, we had communication of the communion bread, and he seeming to signify to me that your honour did not know of any rule passed by law in the Communion Book that it may be such bread as is usually eaten at the table with other meats, etc.; I thought it good to put you in remembrance, and to move your consideration in the same. For it is a matter of much contention in the realm; where most part of Protestants think it most meet to be in wafer-bread, as the injunction prescribeth; divers others, I cannot tell of what spirit,

would have the loaf-bread, &c. And hereupon, one time at a sessions would one Master Fogg have indicted a priest for using wafer-bread, and me indirectly for charging the wafer-bread by injunction; where the judges were Mr. Southcoots and Mr. Gerrard, who were greatly astonished upon the exhibiting of the book. And I being then in the country, they counselled with me, and I made reasons to have the injunction prevail.

"First, I said, as her Highness talked with me once or twice in that point, and signified that there was one proviso in the Act of the Uniformity of Common Prayer, that by law is granted unto her, that if there be any contempt or irreverence used in the ceremonies or rites of the Church, by the misusing of the orders appointed in the book, the Queen's Majesty may, by the advice of her commissioners, or metropolitan, ordain and publish such further ceremonies, or rites, as may be most for the reverence of Christ's holy mysteries and Sacraments, and but for which law her Highness would not have agreed to divers orders of the book; and by virtue of which law she published further order in her injunctions both for the Communion-bread, and for the placing of the Tables within the quire. They that like not the injunctions force much the statute in the book. I tell them that they do evil to make odious comparison betwixt statute and injunction, and yet I say and hold, that the injunction hath authority by proviso of the statute. And whereas it is said in the rule, that 'to take away the superstition which any person hath, or might have, in the bread and wine, it shall suffice that the bread be such as is usually to be eaten at the table with other meats, &c.' 'It shall suffice,' I expound, where either there wanteth such fine usual bread, or superstition be feared in the wafer-bread, they may have the Communion in fine usual bread; which is rather a toleration in these two necessities, than is in plain ordering, as is in the injunction.

"This I say to shew you the ground which hath moved me and others to have it in the wafer-bread; a matter not greatly material, but only obeying the Queen's

Highness, and for that the most part of her subjects disliketh the common bread for the Sacrament. And therefore, as her Highness and you shall determine, I can soon alter my order, although now quietly received in my diocese, and I think would breed some variance to alter it. I hear also that in the court you be come to the usual bread. Sir, the great disquiet babbling that the realm is in in this matter maketh me thus long to babble, and would be loth that now your saying or judgment should be so taken as ye saw a law that should prejudice the injunction.”—(*Correspondence of Archbishop Parker*, No. 283, p. 375.)

This is an authority which must command great respect in this Court, and from which I see no reason to dissent, more especially as it proceeds upon a principle of construction similar to that to which I have already adverted as having been adopted in *Westerton v. Liddell* (2), with respect to the covering of the Holy Table. I should add that, according to Bishop Cosin, this “liberty of using wafer-bread” was continued in divers churches of the kingdom—and in Westminster for one—till the 17th of King Charles, i.e. A.D. 1643.—(*Works*, vol. v., p. 481.) I am of opinion that no offence against ecclesiastical law has been proved to have been committed by Mr. Purchas in this matter.

The 6th and 7th Articles contain the following charges:—

“VI.—That you, the said Rev. John Purchas, on the several occasions hereinafter in this article mentioned, in the said church or chapel of St. James’s, Brighton, aforesaid (to wit, on Sunday, November the 1st, 1868; Sunday, November the 8th, 1868; Sunday, January the 31st, 1869), placed or caused to be placed on the Holy Table, or on a narrow ledge resting thereon or connected therewith, or fixed immediately above the same, so as to appear to the congregation to be in contact or connection with the Holy Table, a large metal crucifix with a figure of the Saviour thereon (the same being intended for a ceremonial or religious purpose, and not being a part of the architectural decorations of the church, but being placed on such ledge with the object and intention

of being made to appear a part of the furniture of the Holy Table); and that you, on the said several occasions, allowed the same so placed to remain there during the performance of Divine Service, and during the celebration of the Holy Communion. That you, the said Rev. John Purchas, also, during Lent (to wit, on Sunday, February the 28th, 1869; on Sunday, March the 14th, 1869; and on Good Friday, March the 26th, 1869), having covered, or caused to be covered, the said crucifix so placed on the Holy Table or narrow ledge as aforesaid, with a white veil striped with a red cross, allowed the same to remain on the said Holy Table or narrow ledge so covered during the performance of Divine Service. That you also afterwards (to wit, on Easter Sunday, March the 28th, 1869), having previously removed, or caused to be removed, such veil, kept the said crucifix during Divine Service so uncovered; the circumstance of the said crucifix being so kept covered and uncovered, being intended as and constituting on each of the said occasions a ceremonial and symbolical observance during and connected with such Divine Service.”

“VII. That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, on the following occasions (to wit, on Sunday, November the 8th, 1868; January the 17th, 1869; and Whit Sunday, May the 16th, 1869), did immediately before and during the performance of Divine Service bow and do reverence to the said crucifix.”

I think I am bound to conclude from the evidence before me, unimpeached as it is by any other testimony, and in the absence of any explanation, that the crucifix has been introduced into or connected with the performance of the services prescribed by the Prayer Book, so as to constitute an additional rite or ceremony. And I must admonish Mr. Purchas to abstain from the practice complained of in these Articles.

The next charge in order is the

IXth. “That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, on divers occasions (to wit, &c.), caused vases of flowers

to be placed on the Holy Table, or on a narrow ledge resting thereon, or fixed immediately above the same, so as to appear, and with the object and intention of being made to appear, to the congregation to be in contact or connection with the Holy Table, and allowed them to remain so placed on each of the said occasions during the performance of Divine Service. That you also, during Lent, 1869, caused the said vases of flowers to be removed and taken away; and again afterwards, more especially on Easter Sunday, March the 28th, 1869, and on Whit Sunday, May the 16th, 1869, replaced, or caused to be replaced, the said vases with the same or other flowers; and that you also profusely decorated, or caused to be profusely decorated, the said Holy Table with flowers, the circumstance of such vases and flowers being so placed and kept on the Holy Table, or removed therefrom, being intended by you as and constituting a ceremonial and symbolical observance."

With regard to this charge, there is no evidence that the flowers were used as an additional rite or ceremony, or as an ornament in the sense affixed to that word in the judgment of the Privy Council in *Liddell v. Westerton* (2). They appear to me an innocent and not unseemly decoration, and one not ministering or subsidiary to any usage or doctrine which the Church has rejected or abrogated, and to be in the same category with the branches of holly at Christmas, and the willow blossoms on Palm Sunday, with which our churches have very generally been adorned. I have considered the Bishop of Exeter's judgment on this point to which I was referred, of which I think it is enough to say that it was given nearly ten years before the decision in *Liddell v. Westerton* (2) had settled the law, and drawn the distinction between ornaments (*ornamenta*) and decorations.

And here I must draw attention to the language of the Privy Council in *Martin v. Mackonochie* (3):—

"There is a clear and obvious distinction between the presence in the Church of things inert and unused, and the active use of the same things as a part of the

administration of a sacrament or of a ceremony. Incense, water, a banner, a torch, a candle and candlestick may be parts of the furniture or ornaments of a church; but the censuring of persons and things, or, as was said by the Dean of Arches, the bringing in incense at the beginning or during the celebration, and removing it at the close of the celebration of the Eucharist; the symbolical use of water in Baptism, or its ceremonial mixing with the sacramental wine; the waving or carrying the banner; the lighting, cremation, and symbolical use of the torch or candle; these acts give a life and meaning to what is otherwise inexpressive, and the act must be justified, if at all, as part of a ceremonial law."

I do not pronounce that Mr. Purchas has been guilty of an ecclesiastical offence in this matter.

The 29th article charges as follows:—

"That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on the occasion of a celebration of the Holy Communion at midnight on Christmas Eve, the 24th of December, 1868, placed or caused to be placed, on a shelf just above the credence table in the said church a modelled figure of the infant Saviour, with two lilies on either side, the same being so then placed as a part of the ceremonial of the service of that night, and which was subsequently removed; and that on Whit Sunday, May the 16th, 1869, you placed, or caused to be placed, in the said church or chapel, above and hanging over the Holy Table, a figure, image, or stuffed skin of a dove in a flying attitude, and kept the same so placed during Divine Service, the same being so then placed and kept as a part of the ceremonial of the service."

I think the result of the evidence is that these figures, having regard to the time and the services during which they were brought in and removed, being also emblematic in their character, were ceremonially used upon the occasions referred to, and that, according to the judgment in *Martin v. Mackonochie* (3), they were therefore illegal. It is very possible, however, that these things, perfectly innocent in themselves, were in fact not so used as to fall

H

under the prohibition which attaches to the introduction of new ceremonies; and that, if an explanation had been offered, or other evidence adduced by the defendant, I might have arrived at the conclusion that the things in question belonged merely to the category of what the Privy Council have termed "inert" decorations, and were not actively used in the service; in which case, as at present advised, I should not have pronounced them illegal.

The 24th article charges as follows:—

"That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on Good Friday, 1869, when there was no administration of the Holy Communion, caused or permitted the Holy Table to be and remain during Divine Service without any decent covering, such as is enjoined and required by the 82nd Canon of the Church."

The leaving of the Holy Table wholly bare and uncovered during Divine Service is, I believe, a practice without warrant from primitive use or custom; but it is certainly contrary to the 82nd Canon, which governs this question, and is therefore illegal.

The 25th article charges as follows:—

"That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on Sunday, December the 27th, 1868; on Palm Sunday, 1869; and on Whit Sunday, May the 16th, 1869, caused holy water, or water previously blessed or consecrated, to be poured into divers receptacles for the same in and about the said church, in order that the same might be used by persons of the congregation before and during the time of Divine Service, by way of ceremonial application thereof; and yourself used the same, or caused or permitted the same to be used by others."

There is no evidence to sustain the averments that Mr. Purchas caused holy water or water previously blessed or consecrated to be poured into divers receptacles in and about the church, or that he blessed or consecrated any water, or that he used it himself, or that he caused it to be used by others; there is evidence that there was water in the church, and that some of the congregation crossed themselves with it.

I am of opinion that the criminal charges laid against Mr. Purchas in this Article are not proved.

The 31st, 32nd, and part of the 19th Articles charge as follows:—

"XXXI. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on divers occasions (to wit, &c.), during the saying of the Apostles' creed and Nicene creed, and at the pronouncing of the Absolution in the order for the Holy Communion, and at the giving of the elements to the communicants, and on certain other occasions (to wit, during Divine Service, on Sunday evening, February the 7th, 1867" (*sic*), "and Whit Sunday evening, May the 16th, 1869), during the pronouncing of the Benediction, after the sermon, and on certain other occasions (to wit, during the Communion Service on Ash Wednesday, February the 10th, 1869, and on Sunday, February the 28th, 1869), when about to mix water with the wine, and when about to consecrate the same, you, being then the officiating minister, made the sign of the cross by the appropriate gesture for that purpose, the same being intended as and constituting a ceremony."

"XXXII. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, you being present, and responsible for the due performance of Divine Service therein, on Sunday morning, January the 31st, 1869, during the Communion Service, directed, caused, or permitted and sanctioned, a certain clergyman then assisting you in the performance of Divine Service by reading the Gospel for the day, to kiss the book from which he read the Gospel, such kissing of the book being intended as and constituting a matter of ceremony, the said book, during such reading of the Gospel, being, in a ceremonial manner, held before him by a deacon or attendant."

"XIX. That you, the said Rev. John Purchas, on a certain occasion (to wit, on Sunday morning, January the 31st, 1869), in the said church or chapel of St. James's, Brighton, aforesaid, while reading the prayer for the 'whole state of Christ's Church militant here on earth,' stood with your back to the people, in front of the



middle of the Holy Table and while reading the word 'oblations,' as a religious ceremony took up the chalice, then being on the said Holy Table, and elevated it above your head."

The ruling of the Privy Council in the case of *Martin v. Mackonochie* (3), with respect to the kneeling of the priest during the Communion Service, seems to me to apply to the acts of devotion complained of in these articles, which I must therefore pronounce illegal.

The latter part of Article XVII.—I have already referred to the charges contained in the former part—charges as follows:—

"And that you also, during the whole of such prayer of consecration, stood at the middle of that side of the Holy Table which, if the said Holy Table stood at the east end of the said church or chapel (the said table in St. James's Chapel, in fact, standing at the west end thereof), would be the west side of such table, in such wise that you then stood between the people and the said Holy Table, with your back to the people, so that the people could not see you break the bread or take the cup into your hand."

I must observe that the rubric does not require that the people should see the breaking of the bread or the taking of the cup into the priest's hands; and, if it did so prescribe, the evidence in this case would establish that all the congregation could see him take the cup into his hands, and some of them, at least, could see him break the bread. But in truth the question appears to me to have been settled by the Privy Council in the case of *Martin v. Mackonochie* (3):—

"The rubric before the prayer of consecration then follows, and is in these words:—

"When the priest, standing before the table, hath so ordered the bread and wine that he may with the more readiness and decency break the bread before the people, and take the cup into his hands, he shall say the prayer of consecration, as follows."

"Their Lordships entertain no doubt on the construction of this rubric that the priest is intended to continue in one posture during the prayer, and not to change from standing to kneeling, or *vice versa*;

and it appears to them equally certain that the priest is intended to stand and not to kneel. They think that the words 'standing before the table' apply to the whole sentence; and they think that this is made more apparent by the consideration that acts are to be done by the priest before the people, as the prayer proceeds (such as taking the paten and chalice into his hands, breaking the bread, and laying his hand on the various vessels), which could only be done in the attitude of standing" (p. 382).

I dismiss this charge against Mr. Purchas.

The 18th Article charges as follows:—

"That you, the said Rev. John Purchas, on a certain occasion (to wit, on Sunday morning, November the 1st, 1868), directed, sanctioned, or permitted a certain other clergyman, then officiating for you, in the presence of you, the said Rev. John Purchas, to read the collects next before the epistle for the day in the Communion Service, standing in front of the middle of the Holy Table, with his back to the people; and that on a certain other occasion (to wit, Sunday morning, January the 17th, 1869), you, the said Rev. John Purchas, read such collects yourself, standing with your back to the people."

As to this charge the proof is that both Mr. Purchas and the assistant clergyman on the several occasions stood before the Holy Table with their backs to the people. It is not proved that the assistant clergyman, on the occasion mentioned, stood before the people. The rubric which governs the position of the minister at this period of the service is the one preceding the Lord's Prayer at the beginning of the Communion Service:—"And the priest, standing at the north side of the table, shall say the Lord's Prayer, with the collect following, the people kneeling;" and, after the interval of the Ten Commandments, the rubric enjoins the priest "to stand as before." I am aware that learned persons hold that these words, "the north side," mean "the north side of the table's front," and possibly they do so; but, in the absence of any argument before me to this effect, I think I must take the *prima facie* meaning of the rubric,

and consider it as the north side of the whole table ; and upon this ground I must decide against Mr. Purchas upon this article.

Two charges are contained in that part of the 19th Article to which I have not as yet referred :—

(a.) “ And that on a certain other occasion (to wit, on Sunday evening, January the 31st, 1869) you, the said Rev. John Purchas, did, in the said church or chapel, during the performance of Divine Service, and while reading the collects following the creed, stand in front of the middle of the Holy Table at the foot of the steps leading up to the same, with your back to the people : ”

(b.) “ And that on a certain other occasion, during the performance of Divine Service, in the said church or chapel (to wit, on Sunday morning, February the 7th, 1869), you, the said Rev. John Purchas, directed, sanctioned, or permitted the epistle in the Communion Service to be read in your presence by a minister standing with his back to the people.”

The first offence appears to me plainly contrary to the rubric ; and the second, though, perhaps, not governed by any positive order in the rubric, is obviously contrary to the intent of the Prayer Book, the epistle not being a prayer addressed to God, but a portion of the scripture read to the people.

The 30th article charges as follows :—

“ That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on Sunday morning, November the 1st, 1868, publicly during the performance of Divine Service, that is to say, at the conclusion of the Nicene Creed, gave notice that on the morning of the next day there would be ‘ a high celebration of the Holy Eucharist ’ at eleven o'clock ; and that you, on the same day, after the sermon, gave, or caused to be given, notice that on the next Friday, ‘ being the Feast of St. Leonard, ’ there would be a celebration of the Holy Eucharist at eleven o'clock ; and that on Sunday, the 8th of November, 1868, after the Nicene Creed, you gave notice that the Holy Eucharist would be celebrated on

Wednesday, ‘ being the Feast of St. Martin ; ’ and on Friday, ‘ being the Feast of St. Britius. ’ And that on Sunday morning, January the 31st, 1869, after the Nicene Creed, you gave notice that ‘ on Tuesday next, being the Festival of our Lady, there would be a high celebration of the Holy Eucharist at eleven o'clock in the morning. ’ ”

The Prayer Book does not warrant, in my opinion, this particular mode of announcing that the Eucharist will be celebrated. According to the rubric, after the Nicene Creed notice is then to be given of the Communion, and according to the rubric after the church militant prayer, “ When the minister giveth warning for the celebration of the Holy Communion . . . after the sermon or homily ended he shall read this exhortation following.” It appears to me that the epithet “ high ” has no sanction from the rubric, and, though perhaps in itself not very material, cannot legally be used. It appears from the evidence that at different times notices were given that the feasts of St. Leonard, St. Martin, and St. Britius would be observed. The rubric, after the Nicene Creed, directs that “ the curate shall declare unto the people what holy-days or fasting days are in the week following to be observed.” Mr. Purchas is not charged with having violated the law by omitting to give notice of these holy-days or fasting days, but by having given notice of holy-days which the Church has not directed to be observed. I think the holy-days which are directed to be observed are those which are to be found after the preface of the Prayer Book, under the head of “ A Table of all the Feasts that are to be observed in the Church of England throughout the year.” The feasts of St. Leonard, St. Martin, and St. Britius are not among these ; I therefore think the notices of them were improper, and I must admonish Mr. Purchas to abstain from giving such notices for the future.

This is my judgment upon the particular charges brought against the defendant ; but I cannot conclude it without once again referring to the general question to which these charges relate. In the

judgment in *Martin v. Mackonochie* (1) I said:—

"Before I proceed to consider the greater question, whether they are ceremonies forbidden by the Ecclesiastical Law of England, and more especially by that part of it which consists of the provisions of the Prayer Book and the Statute of Uniformity, I think it right to draw attention to the judgment of the Church universal, and especially of 'that pure and apostolical branch of it established in this realm,' upon the general subject of ceremonies.

"And from that judgment it will, I think, appear that an essential distinction is drawn between those which are, from their origin, immutable, and those which it is competent to the proper authorities to mould according to the varying necessities and exigencies of each particular church" (p. 136).

I then cited various authorities upon this point, and I added,—

"I have thought it expedient to recite the foregoing authorities upon the nature of rites and ceremonies, in order to fortify my position, that the questions now pending before me in no way affect the relations of the Church of England to the Church Catholic, but have reference solely to matters of detail and order in her ministrations, which every independent church has at all times claimed and exercised" (p. 146).

I have deemed it well to repeat this language upon the present occasion, because I think that the proposition which it embodies would, if temperately and impartially considered, tend to prevent the litigation and allay the discord which is at the present moment distracting the energies and weakening the authority of our Church.

Now with respect to the question of costs, I shall condemn the defendant in the costs of all those charges which have been substantiated against him, and as the defendant has not appeared I shall make no order as to the costs of those charges which the promoter has failed to substantiate.

The course which the Registrar will probably think it proper to pursue will

be to tax the promoter's whole costs of suit, and subsequently to deduct from that sum such a proportion as he may think fairly represents the cost of the unsubstantiated charges. It will probably be found a case in which a very close estimate cannot be made; and considerable discretion, subject to the revision of the Court, must be left to the Registrar.

Proctors—Moore & Currey, for promoter.

[IN THE COURT OF ARCHES.]

1869. }

Nov. 26, 29. }

LEE V. MEREST.

*Simony*—12 *Anno*, St. 2. c. 12. s. 2.—*Misconduct*—No issue given in by Defendant—Rules 9, 10, 11 (*Rules and Regulations* 1867)—*Practice*—*Tille-deed*, *Production of*.

*In a criminal suit instituted against a clerk in holy orders by the secretary to the Bishop of Worcester, it was proved that the defendant had been guilty of simony, by reason of his having corruptly and simoniacally obtained presentation and institution to his vicarage, and also of conduct unbecoming a clergyman in unlawfully threatening a certain person to publish a libel upon him with the intent of extorting money:*

*The Court founding its sentence, in respect of the offence of simony, upon the general ecclesiastical as well as statute law, pronounced that the defendant was a disabled person in law to have the vicarage, and that his presentation thereto, and his admission and institution thereupon, were void and frustrate, and of no effect in law; and having regard to all the circumstances of the case, the offence of misconduct as well as that of simony, it further pronounced upon him a sentence of deprivation from the ministry and from the performance of all clerical functions whatsoever in the province of Canterbury, and condemned him in the costs of the suit.*

*And it directed the registrar to apprise the Queen's proctor of the sentence in order that Her Majesty might exercise her right of presentation to the vacant benefice given by 12 Anne, St. 2. c. 12.*

*The defendant in a criminal suit, appeared, by his proctor, to the citation and prayed articles. On the admission of the articles, the proctor intimated that he was not in a position to give in either an affirmative or negative issue, and praying justice, submitted himself to the judgment of the Court. The Court fixed a day for the hearing, and proceeded with the cause as if a negative issue had been pleaded.*

*In a criminal suit instituted for simony the patron was called as a witness and required to produce the deed of conveyance to him of the advowson of the vicarage in respect of the presentation to which the alleged simony had been committed. It was admitted that the deed was in Court, but the witness declined to produce it on the ground that it was a title-deed. The Court, notwithstanding, ordered its production.*

This was a cause or business of the office of the judge, promoted by Mr. John Benjamin Lee, secretary to the Bishop of Worcester, against the Rev. James John Merest, a clerk in holy orders, vicar of the parish of Upton Snodsbury, in the county and diocese of Worcester, for simony, and also for conduct unbecoming a clergyman in unlawfully threatening the Rev. Murray Richard Workman to publish a libel upon him with the intent of extorting money.

The case was sent in the first instance, under the provisions of the Church Discipline Act (3 & 4 Vict. c. 86), by letters of request under the hand and seal of the Bishop of Worcester, to the Court of Arches. The letters of request were accepted, and a decree having been served upon the defendant, Clarkson, as his proctor, entered an appearance on his behalf and prayed articles. Skipwith, proctor for the promoter, brought in articles, which were admitted. Subsequently Clarkson declared that he was not in a position to give a negative or affirmative issue, and praying justice, submitted himself to the judgment of the Court, which

fixed a day (November 26) for the hearing of the cause.

The articles alleged:—

1. That by the laws, canons, and constitutions ecclesiastical of this realm, all clerks and ministers in holy orders are particularly enjoined and required to be grave, reverend, and orderly in their general deportment and behaviour in every respect, and to abstain from any excess whatever, and from anything that may give rise to scandal, &c., &c.

2. That by the same laws, canons and constitutions ecclesiastical, if a clerk in holy orders of the Church of England be simoniacally promoted or presented to any benefice or living ecclesiastical, he is deprivable of same by reason of such simoniacal promotion or presentation, on due examination and proof thereof, and if such clerk shall have been a party or privy to such simoniacal promotion or presentation, he shall be adjudged guilty of simony. And that by an Act passed in the 12th year of the reign of Queen Anne, being an Act for the better maintenance of curates within the Church of England, and for preventing any ecclesiastical person from buying the next avoidance of any such preferment, if any person shall for any sum of money, reward, gift, profit or advantage, directly or indirectly, or for or by reason of any promise, agreement, grant, bond, covenant or other assurance of or for any sum of money, reward, gift, profit or benefit whatsoever, directly or indirectly, in his own name or in the name of any other person, take, procure or accept the next avoidance of or presentation to any benefice with cure of souls or living ecclesiastical, and shall be presented thereupon, such presentation and every admission, institution, investiture and induction upon the same shall be utterly void, frustrate and of no effect in law, and such agreement shall be deemed a simoniacal contract, and the person so corruptly taking, procuring and accepting the said benefice or living ecclesiastical aforesaid, shall thereupon be adjudged a disabled person in law to have and enjoy the said benefice, and shall also be subject to the pains and penalties inflicted by the law ecclesiastical.

3. That you, the said James John Merest, are and have been for two years last past, a clerk in holy orders of the said Church of England.

4. That by deed, dated the 29th day of February, 1868, the Rev. Henry O'Donnel, clerk, conveyed the advowson of the vicarage and parish church of Upton Snodsbury, in the county and diocese of Worcester, to one Murray Richard Workman.

5. That the said Murray Richard Workman purchased the said advowson from the said Henry O'Donnel with your knowledge, privity and consent, with intent to present you, the said James John Merest, to the said vicarage and parish church upon the then next avoidance thereof, in pursuance of an agreement made by and between you and the said Murray Richard Workman in that behalf.

6. That about the end of the year 1867, or the beginning of the year 1868, you, the said James John Merest, made an agreement or promise, by which you undertook to pay the said Murray Richard Workman a sum of money, or otherwise to reward, profit, or benefit the said Murray Richard Workman, in consideration of his procuring for you the next avoidance of or presentation to the said vicarage and parish church, or of his presenting you, or causing you to be presented to the same, on the next avoidance thereof.

7. That you were thereupon, and in pursuance of such agreement or promise of or for a sum of money, reward, profit, or benefit, as in the last preceding article mentioned, presented to the said vicarage and parish church by the said Murray Richard Workman on the next avoidance thereof, which said next avoidance took place by and upon the resignation of the said Rev. Henry O'Donnel, on or about the 25th day of March, 1868.

8. That in or about the month of June, 1868, it was agreed between you, the said James John Merest and the said Murray Richard Workman, that in consideration of the said Murray Richard Workman obtaining for you the said next avoidance of or presentation to the said vicarage and parish church, or of his presenting or causing you to be presented to the same

on such next avoidance as aforesaid, the said Murray Richard Workman should commence an action against you in the Court of Exchequer of Pleas at Westminster, to recover the sum of 350*l.*, as for money lent to you by the said Murray Richard Workman, and that you should suffer judgment by default in the said action; and that on the 10th day of June, 1868, an action was accordingly commenced in the said court, in which the said Murray Richard Workman was plaintiff, and you, the said James John Merest, were defendant; and on the 22nd day of June, 1868, the said Murray Richard Workman signed judgment against you in the said action for the sum of 350*l.* and costs.

9. That on the 3rd day of August, in the said year 1868, you, the said James John Merest, were upon the presentation aforesaid admitted and instituted to the vicarage and parish church of Upton Snodsbury by the Right Reverend Father in God, Henry, by Divine permission, Lord Bishop of Worcester, after you had made and subscribed the declaration against simony, required by the Clerical Subscription Act, 1865.

10. That by reason of the premises, you, the said James John Merest, have been guilty of the offence of simony, and have knowingly entered into a simoniacal contract; and have, by reason of an agreement and promise of or for a sum of money, reward, gift, profit, benefit, or advantage, taken, procured, or accepted the next avoidance of or presentation to the said vicarage and parish church, and have been presented to the same thereupon.

11. That by reason of the premises, you, the said James John Merest, have been corruptly and simoniacally promoted and presented to the said vicarage and parish church.

The articles further charged the defendant with having been convicted at the assizes held at Worcester, on Thursday, the 4th of March, 1869, of unlawfully threatening the said Murray Richard Workman to publish a libel upon him, with intent to extort money from him.

The case (on Nov. 26) came before the Court on hearing.

thing I can get for you, and for some time to come the only one likely.

"Yours faithfully,

"M. R. Workman.

"The Rev. J. J. Merest.

"Your uncle's allowance will not come until about January 6th, and he must not be asked for it. I enclose a cheque for 5*l*."

Mr. Workman said he had no doubt he had received answers to these letters, but he had not kept them. Taking those letters with their history, as proved in this Court, in conjunction with the dates and the transactions to which I have referred, especially the transaction by which judgment for 350*l*. was recovered by "arrangement" between the presentee and the patron, it would be difficult to doubt that the presentation to this living was the result of a corrupt and simoniacal contract between the patron and the presentee. But that difficulty becomes a moral impossibility when it is remembered that it was competent to the defendant, as his proctor must have informed him, to have entered the witness box, and have rebutted by an explanation, if such were in his power, the otherwise irresistible inference of guilt arising from the testimony and the circumstances to which I have adverted.

I am of opinion that the promoter of my office has proved both the charges laid in the articles against the defendant. It is not necessary that I should refer to authorities for the purpose of establishing the jurisdiction of this Court in cases of simony. That authority, both as it rests upon the General Ecclesiastical Law and upon the Statute Law, cannot be gainsaid; though happily the reported instances in which it has been exerted have been few and far between. The cases will be found collected under the title "Simony" in the last edition of *Burn's Ecclesiastical Law*, Vol. III. By the general law and by the 40th Canon of 1604, as by the statute 31 Eliz. c. 6, the offence of simony is considered as one of a very grave character; and, though the oath formerly taken under the 40th Canon by the presentee against simony has been abolished by 28 & 29 Vict. c. 122, by the 2nd section of that statute a solemn declaration against

simony has been substituted for it. The defendant, though not technically guilty of perjury, must have deliberately made upon a very solemn occasion a very solemn declaration which he knew at the time he made it to be absolutely false. The statute 12 Anne, Stat. II. c. 12, has not, as far as I am aware, been ever put in force by the Ecclesiastical Court. By the 2nd section of that statute, the obtaining by a clergyman the next avoidance of or next presentation to any benefice is treated as a simoniacal contract, and the presentation and institution are to be utterly void, frustrate and of no effect in law, the simoniacal presentee is to be adjudged a disabled person in law to have the same benefice, and the Crown is to present for the next turn. I see no reason why this statute should not be put in force by this Court; but I found my sentence as well upon the general Ecclesiastical as the Statute Law. I must, in accordance with the exigency of the law, pronounce that the defendant is a disabled person in law to have or enjoy the vicarage and parish church of Upton Snodsbury, that his presentation thereto, and his admission and institution thereupon, are void and frustrate and of no effect in law;—and, having regard to all the circumstances of this case, and the offence of misconduct apart from the charge of simony proved against him, I must pronounce upon the defendant a sentence of deprivation from the ministry, and from the performance of all clerical functions whatsoever in the province of Canterbury; and I must order this sentence to be promulgated in the usual manner by affixing the same to the door of the church of Upton Snodsbury for the usual time. I must further condemn the defendant in the costs of this suit. I shall also direct the registrar to apprise the Queen's Proctor of this sentence, in order that Her Majesty may exercise the right of presentation to the vacant benefice given by the statute.

---

Proctors—L. Skipwith, for promoter; Clarkson. Son & Greenwell, for defendant.

---

allowed to go by default "by arrangement," as Mr. Workman in his evidence said, between the parties. Mr. Workman afterwards issued execution on his property, and levied 5*l*. On the 3rd of August the defendant was instituted, upon the presentation of Mr. Workman, to the benefice. The dates of these transactions, taken in conjunction with their character, and with the position of the parties, all of whom I regret to say are clergymen, are calculated of themselves to excite a grave suspicion of corrupt practices connected with the presentation to this living. That suspicion has been turned into complete proof by the evidence which has been adduced before me. The defendant, who has appeared in the suit by a proctor, has not appeared by counsel or in person before me in Court; he has declined to plead any defence or give any issue; but by his proctor, who is still before the Court, has prayed justice.

It appears from the evidence that some quarrel took place between Mr. Workman and the defendant, from which probably has arisen the means of unravelling this transaction. Certain letters were produced in evidence before me, and were proved to have been used before the magistrates who committed the defendant for trial at Worcester. Among those letters were two, which Mr. Workman proved were in his handwriting, and were produced to him by the defendant's solicitor, when he, Workman, was cross-examined by the solicitor. The first letter bears date November 19th, 1867, and is as follows:—

"Church and School Gazette Office,  
"10, Southampton Street, Strand, w.c.,  
"November 19th, 1867.

"My dear Sir,

"As all the small livings are very dear in proportion, and your capital is not sufficient to obtain one with possession, I propose getting some assistance for you, but in doing this I must act without your knowledge, or my endeavours might be abortive. Hence I am silent for your own sake, and you also must be the same. Suffice it to say that the course I propose will cost you nothing. I wish to have Marston in Derbyshire for you, and failing

NEW SERIES, 39.—ECCLES.

that a rectory in North Devon, worth 160*l*. and a house. This, however, is dearer, and Marston must be had if possible. You should not attempt Branksea when the weather is bad.

"Yours faithfully,

"M. R. Workman.

"The Rev. J. J. Merest.

"P.S.—You must preserve the strictest silence about the names of any livings mentioned to you, or your succession will be prevented."

The second letter is dated December 19th, 1867, and is as follows:—

"Church and School Gazette Office,  
"10, Southampton Street, Strand, w.c.,  
"December 19th, 1867.

"My dear Sir,

"I enclose a copy of another letter for the bishop, which please send at once. The whole affair has been so far conducted very cleverly, and I am anxious for you not to spoil it by the least injudicious act or word. I have no time for more upon this subject to-day. As regards Upton Snodsbury the income is from tithe and glebe, and the present net 120*l*. about, capable of improvement. There is only single duty, and each rector has either held a curacy, or made that extra by occasional duty. It is three miles from Spetchley and six from Worcester. There is no house at present, but will be one shortly, and in the meantime you can have reasonable lodgings either at Spetchley, or nearer into Worcester. It is a very nice place indeed, and to my mind you could not have a more eligible little living. It is the *Presentation* not *Advowson*. You have not enough money for the latter, and these small livings are all much dearer in proportion. In fact they are most difficult to get hold of at all, and the trouble and difficulty I have had for you cannot well be told. I spoke of Marston, but you would have to wait some time for it, and Upton is nicer. I withheld the name, having promised to do so, till I heard definitely from your uncle, but he will render no help, and you want a small sum. I have now applied elsewhere, and if I can arrange all things I shall have to see you. I can help you to improve the income of Upton, and you can go to it at once. It is the cheapest and the nicest

I

thing I can get for you, and for some time to come the only one likely.

"Yours faithfully,

" M. R. Workman.

"The Rev. J. J. Merest.

"Your uncle's allowance will not come until about January 6th, and he must not be asked for it. I enclose a cheque for 5*l*."

Mr. Workman said he had no doubt he had received answers to these letters, but he had not kept them. Taking those letters with their history, as proved in this Court, in conjunction with the dates and the transactions to which I have referred, especially the transaction by which judgment for 350*l*. was recovered by "arrangement" between the presentee and the patron, it would be difficult to doubt that the presentation to this living was the result of a corrupt and simoniacal contract between the patron and the presentee. But that difficulty becomes a moral impossibility when it is remembered that it was competent to the defendant, as his proctor must have informed him, to have entered the witness box, and have rebutted by an explanation, if such were in his power, the otherwise irresistible inference of guilt arising from the testimony and the circumstances to which I have adverted.

I am of opinion that the promoter of my office has proved both the charges laid in the articles against the defendant. It is not necessary that I should refer to authorities for the purpose of establishing the jurisdiction of this Court in cases of simony. That authority, both as it rests upon the General Ecclesiastical Law and upon the Statute Law, cannot be gainsaid; though happily the reported instances in which it has been exerted have been few and far between. The cases will be found collected under the title "Simony" in the last edition of *Burn's Ecclesiastical Law*, Vol. III. By the general law and by the 40th Canon of 1604, as by the statute 31 Eliz. c. 6, the offence of simony is considered as one of a very grave character; and, though the oath formerly taken under the 40th Canon by the presentee against simony has been abolished by 28 & 29 Vict. c. 122, by the 2nd section of that statute a solemn declaration against simony has been substituted for it. The

defendant, though not technically guilty of perjury, must have deliberately made upon a very solemn occasion a very solemn declaration which he knew at the time he made it to be absolutely false. The statute 12 Anne, Stat. II. c. 12, has not, as far as I am aware, been ever put in force by the Ecclesiastical Court. By the 2nd section of that statute, the obtaining by a clergyman the next avoidance of or next presentation to any benefice is treated as a simoniacal contract, and the presentation and institution are to be utterly void, frustrate and of no effect in law, the simoniacal presentee is to be adjudged a disabled person in law to have the same benefice, and the Crown is to present for the next turn. I see no reason why this statute should not be put in force by this Court; but I found my sentence as well upon the general Ecclesiastical as the Statute Law. I must, in accordance with the exigency of the law, pronounce that the defendant is a disabled person in law to have or enjoy the vicarage and parish church of Upton Snodsbury, that his presentation thereto, and his admission and institution thereupon, are void and frustrate and of no effect in law;—and, having regard to all the circumstances of this case, and the offence of misconduct apart from the charge of simony proved against him, I must pronounce upon the defendant a sentence of deprivation from the ministry, and from the performance of all clerical functions whatsoever in the province of Canterbury; and I must order this sentence to be promulgated in the usual manner by affixing the same to the door of the church of Upton Snodsbury for the usual time. I must further condemn the defendant in the costs of this suit. I shall also direct the registrar to apprise the Queen's Proctor of this sentence, in order that Her Majesty may exercise the right of presentation to the vacant benefice given by the statute.

---

Proctors—L. Skipwith, for promoter; Clarkson, Son & Greenwell, for defendant.

---



## [IN THE PRIVY COUNCIL.]

1870. } THOMAS BYARD SHEPPARD, ap-  
 Mar. 26. } pellant; THE REV. WILLIAM  
 JAMES EARLY BENNETT, re-  
 spondent.\*

*Church Discipline Act (3 & 4 Vict. c. 86)—Commission—Letters of Request—Citation—Articles—Sufficiency of.*

*In a proceeding under the Church Discipline Act against a clerk in orders for maintaining doctrine alleged to be heretical, the commission was to inquire as to certain works of the accused of which the titles and certain passages were given. The letters of request and the citation referred to the same works and passages. No charge was preferred before the Commissioners, or alleged in the letters of request or citation, in respect of the 29th Article of Religion; but the articles contained additional passages from the said works, and a charge (amongst others) of impugning the 29th Article of Religion:—Held, that the Commission is a mere preliminary step for the purpose of advising the bishop whether there is a prima facie case; that the letters of request are for the purpose of founding jurisdiction in the higher Court; that the citation need only state generically the offence charged so that the accused may know the nature of the offence he is called upon to answer; and that the citation was sufficient to enable the promotor to introduce into the articles the additional passages and charge of impugning the 29th Article of Religion.*

*In support of a charge of heresy, articles filed in the Arches Court set out passages from the works of the accused, in which he expressed approval of the works of certain other writers alleged to contain heretical doctrine:—Held, that the articles must set forth passages from the works of the accused in which he has maintained heretical doctrine; that it is not sufficient to set out passages of works of which the accused has expressed a general approval, and which contain passages he has not by his own publication accepted in their totality.*

This was an appeal from a decree of the Official Principal of the Arches Court

\* Present, the Lord Chancellor (Lord Hatherley), the Archbishop of York (Dr. Thomson), the Bishop of London (Dr. Jackson), Sir Joseph Napier, and Lord Justice Giffard.

of Canterbury, in a cause of the office of the Judge promoted by Thomas Byard Sheppard, of the parish of Frome Selwood, in the diocese of Bath and Wells, against the Rev. William James Early Bennett, a Clerk in Orders of the Church of England, the vicar of the said parish of Frome Selwood.

The cause was promoted in the Arches Court by virtue of letters of request under the episcopal seal of the Rt. Rev. Baron Auckland, Lord Bishop of Bath and Wells. By such letters of request, the bishop did, by virtue of the Church Discipline Act, request the said Official Principal to issue a citation, citing the respondent to appear at a certain time and place and to answer to certain articles for having offended against the laws ecclesiastical by having, within two years last past, caused to be printed and published within the diocese of London certain works, in which he advisedly maintains or affirms doctrine repugnant to the articles and formularies of the Church of England, the said works being entitled respectively, "Some Results of the Tractarian Movement of 1833," forming one of the essays contained in a volume entitled "The Church and the World," edited by the Rev. Orby Shipley, clerk, printed and published in London in the year 1867; "A Plea for Toleration in the Church of England, in a letter to the Rev. E. B. Pusey, D.D., Regius Professor of Hebrew and Canon of Christ Church, Oxford, second edition," printed and published in London in the year 1867; and "A Plea for Toleration in the Church of England, in a letter to the Rev. E. B. Pusey, D.D., Regius Professor of Hebrew and Canon of Christ Church, Oxford, third edition," printed and published in London in the year 1868; and finally, to hear and determine the cause according to the law.

No appearance was given to the citation, and in default of appearance articles were filed, and the Judge appointed to hear on the admission thereof.

On the 30th of October, 1869, the Judge, having heard counsel on behalf of the appellant, directed the articles to be reformed, by omitting all such parts thereof as charged the respondent with

contravening the 29th Article of Religion, entitled *Of the wicked which eat not the body of Christ in the use of the Lord's Supper*.

From this decree the present appeal was brought.

The case in the Court below, with the Commission, letters of request, and citation, will be found reported in 39 Law J. Rep. (N.S.) Eccl. p. 1.

*Mr. A. J. Stephens, Dr. Tristram, Mr. Archibald, and Mr. Shaw.*—The first question to be determined is: What is the office of the Commission? This depends on the language of the Church Discipline Act. The proceedings before the Commission are preliminary. The jurisdiction of the Arches Court is not limited by the Commission—*Sanders v. Head* (1), *The Bishop of London v. Bonwell* (2), *Ditcher v. Denison* (3). The Commission is to advise the bishop upon the matters alleged, whether there is any *prima facie* case against the accused so as to justify further proceedings. The letters of request are the only machinery by which the case is brought into the Arches Court, *Sheppard v. Bennett* (4). They are the foundation of the jurisdiction of the Arches Court. The jurisdiction of the Arches Court is not founded on or limited by the charges referred to the Commissioners. The citation must be framed so that the accused may be able to know the nature of the charge made against him, as, for example, whether the charge is one of heresy or one of immorality, *Steward v. Francis* (5). It is, however, immaterial in this case, because the charges here are the same throughout all the proceedings. The Commission, the letters of request, and the citation, all allege the same offence. The charge in the articles does not exceed the charge contained in the letters of request. It is not necessary to specify in these preliminary proceedings each particular heresy, *Flamank v. Simpson* (6), *Heath v. Burder* (7), *Wil-*

*liams v. Bishop of Salisbury* (8). Then as to the articles: The prosecution is not confined to the works published by the person accused. A clerk who advisedly expresses approval in his works of the works of other persons which contain heretical doctrine, thereby adopts the contents of these works, and makes them his own. Can it be said that he is not liable for his conduct? The works referred to in the passages set out in the articles have been expressly approved of by the respondent. The doctrine of the real presence in the Lord's Supper cannot be separated from the doctrine of the reception by the wicked. A person is liable, both civilly and criminally, for the words of others which he adopts—*Reg. v. Slaney* (9), *Darby v. Ouseley* (10), *Thornton v. Stephen* (11), *Watts v. Fraser* (12), *Hodgson v. Oakeley* (13).

No appearance was entered on behalf of the respondent.

The LORD CHANCELLOR delivered the judgment of their Lordships:—

The appeal presented to the Committee upon this occasion is an appeal from a decision of the Judge of the Court of Arches, by which he has directed certain articles that have been brought against the Rev. William James Early Bennett to be reformed "by omitting all such parts thereof as charge the respondent in the appeal with contravening the 29th Article of Religion, entitled 'Of the Wicked which eat not the Body of Christ in the use of the Lord's Supper;'" and the learned Judge came to that conclusion upon two distinct grounds, both of which have been argued before us. We have not had the advantage of hearing counsel on the other side, in consequence of Mr. Bennett not appearing in the course of these proceedings; but, having heard the case very ably and fully argued by Mr. Stephens, we feel ourselves in a condition to pronounce the conclusion at which we have now arrived, namely, that the learned Judge's decision

(1) 3 Curt. 48.

(2) 6 Jur. (N.S.) 709.

(3) 11 Moore P.C. 341.

(4) 38 Law J. Rep. (N.S.) Eccles. 49.

(5) 3 Curt. 214.

(6) 36 Law J. Rep. Eccl. 4.

(7) 16 Moore, P.C. 1.

(8) 2 Moore, P.C. (N.S.) 376.

(9) 5 Car. & P. 213.

(10) 1 Hurl. & N. 267.

(11) 2 Moo. & R. 45.

(12) 7 Car. & P. 369.

(13) 1 Rob. Eccl. Cases, 322.

is correct—although, as there are two grounds upon which that decision was rested, we feel it necessary to explain upon which of those two grounds we think it right to agree with him in his conclusion.

Their Lordships cannot concur in the view which he appears to have taken as the first ground upon which he rested his decision, but they think that the second ground which he took, and which goes more to the merits and substance of the case, is a substantial ground, and one upon which the decree may well be, and ought to be, supported.

He states the first of his two grounds thus: "On the grounds, therefore, that this particular charge of heresy was not preferred before the Commissioners, on whose report the subsequent proceedings are founded, and that it was not mentioned in the letters of request, or in the decree or citation, I should, having regard to the law and practice of this Court, and the authorities to which I have adverted, be of opinion that the articles must be reformed by striking out the portions which relate to it." The reason for his arriving at that conclusion appears to be this. Mr. Bennett had published a certain number of pamphlets or works, and the first step taken under the statute was that of issuing a commission to inquire whether or not proceedings should be had against him, on account of positions maintained in those publications, this commission being issued by the bishop pursuant to the statute. What the commission were directed to inquire into was this: they were to make inquiry as to the grounds of a certain charge made by the promoter of this proceeding, Mr. Sheppard, against Mr. Bennett, the charge being that he (Mr. Bennett) "had, within the diocese of London, committed an offence against the laws ecclesiastical of this realm, by having caused to be printed and published within the said diocese certain works, in which he advisedly maintains or affirms doctrine contrary or repugnant to the articles and formularies of the United Church of England and Ireland, the said works being entitled respectively"—and then the titles are set out; after which are these words, "and containing the following among other statements, in respect of

which the said charge has been made, that is to say;" and then the commission proceeds to set forth a number of passages selected from those various writings, all following this heading, "containing the following among other statements."

Upon the finding of the commission that there was ground for further proceeding, letters of request were forwarded by the bishop to the archbishop, requesting that a citation or decree should be issued under the seal of the Court of Arches, citing Mr. Bennett "to appear at a certain time and place therein to be specified, and answer to certain articles, heads, positions, or interrogatories touching and concerning his soul's health, and the lawful correction and reformation of his manners and excesses, and more especially for having offended against the laws ecclesiastical, by having, within two years last past, caused to be printed and published, within the diocese of London, certain works, in which he advisedly maintains or affirms doctrine directly contrary or repugnant to the articles and formularies of the United Church of England and Ireland, the said works being entitled respectively;" and then all the titles are given, and only the titles of these works; and then the letters state that the articles are "to be administered to him, the said William James Early Bennett, at the voluntary promotion of the said Thomas Byard Sheppard;" and the archbishop is required finally "to hear and determine the said cause according to the law and practice of the Court."

Upon that there follows the decree or citation, which, reciting the commission and reciting the letters of request, proceeds to cite the respondent in the following manner, namely, that he is to answer the charge, the charge being that he has committed an offence by publishing these works, the titles of which are again set forth; and then in the decree or citation are also added these words, "containing the following among other statements, in respect of which the said charge has been made, that is to say," then giving the whole of the various passages which were cited from the books in the original proceedings before the commission.

Now, to proceed by steps in this matter:

with reference to the commission, their Lordships do not think it necessary to dwell at any length upon the proceeding as set forth in the commission, for this simple reason, the commission is merely a preparatory step taken by those whom the bishop is, if he think fit, to call together to consult and advise with him as to whether or not a sufficient *prima facie* case is made out, so as to render it desirable and fitting that he should have the case further inquired into before a regular tribunal; and when the commission sitting for that purpose have once found, as this commission did find, that there is reason for proceeding, they have performed their duty, and, after that duty is performed, the bishop, acting upon their suggestion and advice, proceeds by letters of request to confer jurisdiction upon the Superior Court to determine the matter, not by way of appeal, but in the first instance, which he by the statute is authorised to do.

When, therefore, that step has been once passed, it seems to their Lordships unnecessary to consider any further what was or what was not before the commission, although in this case nothing will be found to depend upon it, because the subsequent proceedings seem to have taken their regular course. But there may be other cases in which such circumstances will not occur; therefore, it is desirable that one should at once state what appear to their Lordships to be the proper function and course of proceeding of the commission, namely, simply advising the bishop on the matters which are alleged before him, leaving the bishop to take his own course after that has been done, and to bring the matter in such form as he thinks fit by letters of request before the higher Court.

The bishop then, by the letters of request, founds jurisdiction in the higher Court, which could not proceed, except upon such letters of request, until the bishop had heard and disposed of it in his own Court; and, having so founded the jurisdiction, the letters also set forth that upon which he desires citation to be issued to the clerk who is alleged to have offended.

In this citation their Lordships are quite

clear that all that is necessary to be done is to state generically the offence with which the clerk is charged. He must be told undoubtedly what charge it is that is brought against him. But that may be done in terms reasonably precise without going into any minute degree of detail—so that, in short, he should not be tried on a charge of heresy, when perhaps it may be some other charge which is to be alleged in the articles. He must have the offence generically stated in such terms as to lead him to know what the matter is which he is called upon to answer, but the detail of that charge will be made in the articles to be exhibited, for the purpose of giving him full information. He is expressly told in the citation that articles will be exhibited against him. To those articles he will be called upon to put in his answer; and, as regards the charge itself, it is not necessary that it should enter into the minute details and particulars which it is essential that the articles afterwards should dwell upon.

Therefore, in this case the citation seems to have been quite sufficient for the purpose for which it was issued, namely, telling Mr. Bennett that he was charged with having, in certain publications of his which were enumerated, offended by setting forth doctrine which was contrary to the doctrines held by the Church of England; and it proceeded in a manner which it is not at all necessary, as it appears to their Lordships, that it should do, to set forth fully certain passages from those works which he is so alleged to have published. But their Lordships do not agree with the learned Judge that those passages are to be taken as forming part of what is technically called the "*praesertim*," or the special subject-matter with which he is charged. The special subject-matter with which he is charged is quite sufficiently set forth for the purpose for which the citation is issued, as "the having published these books," in which are contained the passages that are alleged afterwards in the articles to constitute the offence.

The passages or extracts are set forth in a manner which no doubt left him no reason to complain, because they do state very specially and particularly (more so,

their Lordships think, than is absolutely necessary) the particular heads under which he was supposed to have offended. That might have been left to the articles. They were, however, set forth in the original citation. Without them he would have no reason to complain whatever, because he would know for what purpose he had been cited before the Court, and he would know in what books the charges would be found. He would also know that in due course of time articles would be exhibited, bringing before him specifically the nature of those charges.

So far, therefore, we should have thought there would be no ground for saying that the promoter should not be at liberty to introduce a charge against Mr. Bennett of impugning the 29th Article, by setting forth that the wicked partake of the Lord's body and blood in receiving the holy communion, if it had been only on this ground that the passages from the publications supposed to contain that opinion had not been set forth in the citation, provided the passages were to be found in the books, and were afterwards minutely and specifically to be set forth in the articles which the respondent would have, ultimately, to answer.

The sole point remaining, therefore, is to see whether or not the articles, as set forth, are supported by passages from the works in question, the publishing of which is charged as an offence. Now that, no doubt, is a more grave and important part of the case, and upon this, which is the second ground of objection to the articles which the learned Judge has directed to be reformed, their Lordships have come to the conclusion, that they ought to agree with him in his decision. He says this,—“Assuming, however, for the sake of argument, that these objections do not apply to the present case, there remains one of even a graver character to be stated. This is a highly penal proceeding against the defendant. It is a criminal suit for the promulgation of heresy. The particular charge is not on account of a heresy distinctly stated or uttered in any sermon, or public act of preaching, or statement connected with the discharge of his duties as incumbent of the parish committed to his charge. It is a heresy alleged to be

contained in an essay or review upon ecclesiastical events in the Church since the year 1833. It is to be extracted from what purports to be an historical statement of a trial against another clergyman as long ago as the year 1856. The author narrates that Archdeacon Denison was condemned by the then Archbishop of Canterbury, for teaching the doctrine of the Real Presence (not a quite accurate statement, I may observe in passing), that the sentence was reversed, that a protest against the Archbishop's sentence was signed by seventeen priests; of these the defendant is said to be one. It is contended, that by this reference to the protest, which is in a work not mentioned in the citation, the defendant has made himself responsible in this suit, be it observed, for what is contained in that protest.”

Now, without adopting every word of what is said by the learned judge in his reasoning upon the subject, in principle it appears to their lordships to be correct to say, that the promoter must find, in the first instance, as the foundation of the articles alleging that erroneous doctrine has been promulgated, something contained in the publication which he alleges the accused to have issued forth, something which lays the ground of the special charge which he puts forth in his articles; and upon that part of the case it may be well to refer to what has been said by the Lord Chancellor in delivering the opinion of the Judicial Committee in the case of the “*Essays and Reviews*,” the case of the *Bishop of Salisbury v. Williams*, and the mode in which he puts the necessity of stating, in the articles of charge, the passages upon which the promoter intends to rely as justifying the articles. I am citing from 2 Moore's Reports (n.s.) p. 423 :—“These prosecutions are in the nature of criminal proceedings, and it is necessary that there should be precision and distinctness in the accusation. The articles of charge must distinctly state the opinions which the clerk has advisedly maintained and set forth the passages in which those opinions are stated; and, further, the articles must specify the doctrines of the Church which such opinions or teaching of the clerk

are alleged to contravene, and the particular articles of religion, or portions of the formularies which contain such doctrines. The accuser is, for the purpose of the charge, confined to the passages which are included and set out in the articles as the matter of the accusation; but it is competent to the accused party to explain from the rest of his works the sense or meaning of any passage or word that is challenged by the accuser."

Then what has to be done is this: there must be set forth in the articles, as is set forth here in the 12th, in the 18th, and the 25th articles, what it is that is charged against the clerk, and what is the article of religion or portion of the formularies of the Church containing doctrine which the clerk is alleged to have impugned. Well, that has been complied with properly in these articles so far, by stating that he has impugned the doctrine contained in the 29th Article of our thirty-nine Articles, and that he has impugned it, because he has stated that the wicked receive the body and blood of our Lord in the Holy Communion. So far the articles perform their duty, but then we have to see whether there are specified the passages in which he, the clerk, is alleged to have stated an opinion controverting that article. Feeling that to be required, the promoters refer in the 12th article, to the 5th previous article, as setting forth the passages; in the 18th article they refer to the sixth article, and in the 25th article they refer to the 7th previous article. To the 5th, 6th, and 7th articles, therefore, we must look to see what are the passages in the writings of Mr. Bennett in which the erroneous doctrine is said to be contained.

The only passage which has been pointed out to their Lordships' attention in the 5th article is this: it is a very long article, and there are numerous passages cited in it, but the only passage bearing upon this point, that is cited, is contained in page 13 of the appendix, beginning at line 50. Having spoken a good deal about the Real Presence in the previous part, Mr. Bennett proceeds to say:—"Among others, Archdeacon Denison taught the doctrine of the Real Presence to his candidates for ordination; and

thence arose the extraordinary trial of the faith which terminated in an ignominious conclusion at Bath." We observe, therefore, that he refers entirely to Archdeacon Denison's teaching the doctrine of the Real Presence, a doctrine of an entirely different character—whatever be the view of any persons with reference to its being a correct or incorrect doctrine—from that doctrine which is struck at by the 29th of the thirty-nine Articles, as is evidenced (a fact, as we have already pointed out during the argument) by the very framers of the Articles themselves. The one doctrine may be held, as the learned judge in the Court below says, without the other doctrine being held by the same person who holds the first. Therefore we find nothing relating to the 29th Article there.

Then, having thus referred to what Archdeacon Denison taught as to the doctrine of the Real Presence, Mr. Bennett proceeds to say:—"The doctrine (which, of course, is the same doctrine) was condemned by the Archbishop of Canterbury in his own person, but the judgment was resisted. The Church was harassed by an unworthy and undignified contest, which ended in nothing, while several priests of determined mind entered their solemn protest" (and then, by innuendo, the framer of the article says, "thereby meaning and intending a certain protest signed by, amongst others, you, the said William James Early Bennett, and which protest is hereinafter, in this article, set forth") "against the whole proceeding of the Archbishop, reiterating the doctrine and challenging a new verdict for the truth. This protest was signed by seventeen priests, two of whom were Dr. Pusey and Mr. Keble, and appealed in 'the first instance,' to a free and lawful synod of the bishops of the province of Canterbury, and then, if need be, to a free and lawful synod of all the Churches of our communion, when such, by God's mercy, may be had." After this, nothing further was heard of the silly trial of *Ditcher v. Denison*. It died a natural death. But what became of the doctrine?"—the doctrine, clearly the doctrine of the Real Presence. "From 1853, when it passed the judgment of the Heads of

Houses in Oxford, to 1867, when at length no one is inclined to resist it, it has grown and multiplied with wonderful rapidity, according to the saying, *Magna est veritas, et prevalebit*. In 1857, he whom now it has pleased God to take to his rest, the saintly John Keble, set forth the seal and conclusion of the whole, in his own beautiful and loving way, in a work entitled 'Eucharistic Adoration.' From that moment the whole question has been suffered to advance in peace."

In those words it is impossible to find a single sentence affecting the 29th Article. As their Lordships have stated before, the doctrine of the Real Presence is not a doctrine in contravention of that Article, whether it be a doctrine in contravention of any other or not.

Then the only way in which it is sought to make out that the doctrine of the 29th Article has been contravened by inference by Mr. Bennett is this:—the promoter says there is a reference to the protest against the Archbishop of Canterbury's judgment in *Ditcher v. Denison*. He says, farther, "That protest was signed by you, the accused, Mr. Bennett;" and, therefore, "You have so referred to this protest as to justify us in saying, that you have, within two years, committed the offence of impugning the 29th Article." The protest itself was signed far more than two years ago, and it appears to me, therefore, I confess, that it is exactly the same whether the protest was signed by Mr. Bennett himself or by any other person, and that the protest is in exactly the same position as the book published by Mr. Keble, or any other work that has been referred to by Mr. Bennett in his own publications. You cannot rely upon the protest itself as being that on which you can found a ground for charging Mr. Bennett, because of course he cannot be charged upon that which he signed so many years ago; but you must find a recognition of that protest—not merely a reference to it, but a recognition of that protest, and an adoption of it *in toto*, or an adoption of it so far as it specially teaches any erroneous doctrine. Of course, if Mr. Bennett had set out the protest, and said, "To this, and every word of it, I agree,"

NEW SERIES, 39.—ECCLES.

or if he had set out the particular part of the protest which, on reading it, you would say does deal in a manner apparently, at all events, inconsistent with the 29th Article, and said, "As to this portion I agree," or even, possibly, if he had said (I do not wish to say more, as we are upon a hypothetical case), "There is nothing in this protest from beginning to end, which I signed many years ago, from which I see any reason to depart;" any such mode of reference as that might have raised a very different question, but the only reference we find to the protest is a qualified one, a reference entirely dealing with the doctrine of the Real Presence; and it is impossible, as it seems to their Lordships, to say that, upon that ground, the promoter is entitled to import into this charge a passage which is not to be found in any one of the books which Mr. Bennett has published, but in a document of a totally different character, one proceeding from sixteen other persons (it is said to have proceeded from him too), and which contains a variety of statements, one of which is selected to fix a charge upon Mr. Bennett, but as to which Mr. Bennett himself is totally silent in the books before the Court.

It appears to us, therefore, as far as the 12th article is concerned, which is founded solely upon this 5th article, that it does not conform to the rule laid down in the *Essays and Reviews* case, namely, of specifying the passages in which the clerk is said to have offended in such a manner as to bring him within the cognizance of the Court at the present period, namely, a passage or passages written and published by the clerk in those books which he is alleged to have written and published within the last two years.

We must now go to the 6th article, upon which the 18th article is founded. In that 6th article there is a somewhat nearer approach to a recognition, but still very far from being an actual adoption,—a somewhat nearer approach, say, to a recognition of the alleged erroneous doctrine by Mr. Bennett, in consequence of the peculiar wording of his reference to a work published, not by himself, but by Dr. Pusey, some considerable time since.

The passage is as follows:—"Then fol-

K

lowed, in 1855, your voluminous work." Then the framer of the article says, "meaning thereby the work of the Rev. E. B. Pusey, entitled, 'The Doctrine of the Real Presence as contained in the Fathers from the death of S. John the Evangelist to the Fourth General Council vindicated, in Notes on a Sermon, "The Presence of Christ in the Holy Eucharist," preached A.D. 1853 before the University of Oxford.'" And Mr. Bennett goes on, "being principally a catena of the Fathers, to prove the catholicity of the doctrine which you advocated. And then followed again, in 1857, in order to bring the doctrine fully home, and apply it to the English Church, another volume, concerning which there could be no mistake, for it bore this remarkable title, 'The Real Presence of the Body and Blood of Our Lord Jesus Christ the Doctrine of the English Church, with a Vindication of the Reception by the Wicked, and of the Adoration of Our Lord Jesus Christ truly present.' And then followed upon this the work of our most dearly lamented friend John Keble, entitled, 'Eucharistical Adoration,' in which is clearly set forth that very worship which we are now endeavouring to follow, that very adoration which we now teach our people to use as due and right to give to the 'Presence of our Blessed Lord upon our altars.'"

The first remark to be made upon that quotation is this, that it is quite clear that Mr. Bennett is not adverting to the doctrine of the reception by the wicked, because if that had been so, and if he was referring to Dr. Pusey's pamphlet as indicating the truth of that peculiar error (if such it be), then the promoter would have found the passage in Mr. Bennett's own work. He would have set forth the passage in which Mr. Bennett, speaking of that doctrine, cites Dr. Pusey with approbation as supporting him in that view. What is quite clear from the ending of the passage is this, that he is here supporting the doctrine of the Adoration and the doctrine of the Real Presence. Those are subjects on which have been framed other articles, as to which he is called upon by the learned judge in the Court below to answer. The articles exist upon both those heads, and those articles he will have

to answer. Dealing with that, he says in effect that the catholicity of the doctrine advocated by Dr. Pusey has been fully brought home to the English Church. Then he gives the title of the work, which involves three subjects, the Real Presence, the Reception by the Wicked, and the Adoration of our Lord as being present. These are all totally distinct heads of doctrine. Then he says, to shew to which he is referring, "And then followed upon this the work of our most dearly lamented friend John Keble, entitled, 'Eucharistical Adoration,' in which is clearly set forth that very worship which we are now endeavouring to follow, that very adoration which we now teach our people to use," and so on.

It is clear, therefore, what are the particular points, as clear as the previous case to which he is calling attention, namely, the Real Presence and the Adoration; and it is too much to say that, because a title embodies three subjects, and the respondent speaks approvingly of the work, and speaks of it as establishing the doctrine as to two of those subjects, therefore he is to be held as having expressed approbation as to the third doctrine contained in the title-page. Although he intimates that he is glad to receive the book, because there can be no mistake on the particular points which he wishes to hold forth to the public as being the right and proper doctrine, there is no ground for coming to the conclusion that, because he thus approves, as he does clearly approve, of the work as supporting these two doctrines, therefore *ex necessitate* he must be held to approve of the third doctrine, and that, consequently, such work of Dr. Pusey is to be held forth as a ground for supporting the 18th article. In other words, it would be to make him answerable for Dr. Pusey's doctrine without his having distinctly and avowedly in words adopted it.

In the 7th article, which is referred to in the 25th, and, indeed, both in the 6th and 7th articles, there is another passage, on which it is alleged that the learned Judge in the Court below ought to have admitted the 25th article. I am reading from the 6th article, where the words are,—“That the said propositions so



hereinbefore in this article referred to as having been maintained by the said Archdeacon Denison are certain propositions maintained by him in certain works or writings, for which he was cited to appear before the then Archbishop of Canterbury, under 3 & 4 Vict. c. 86, at a Court held by his Grace in the city of Bath, in the year 1856, and are as follows:—  
 '1. That the body and blood of Christ are really present in the consecrated bread and wine. 2. That the body and blood of Christ are really present in the consecrated bread and wine after a manner not material, or, as it is said "corporal," but immaterial and spiritual. 3. That the body and blood of Christ being really present after an immaterial and spiritual manner in the consecrated bread and wine are therein and thereby given to all, and are received by all who come to the Lord's Table.' "

Now, Mr. Bennett has not given his explicit approbation to those three propositions which are cited by the pleader, and only cited by the pleader, as being the propositions which were in question in Archdeacon Denison's case; but all he has said is this:—"We have the celebrated legal case of Archdeacon Denison. Archdeacon Denison maintained, in various propositions, the real objective presence of our Blessed Lord in the Eucharist. His doctrine was impugned, and he was cited before the Church Courts. The Archbishop of Canterbury, *in propria persona*, came to Bath to try the question. It broke down." There, again, he is only saying exactly what he said before. He says that the archdeacon maintained the doctrine of the Real Presence, and the pleader puts it thus:—"Besides that, there were several other doctrines, and because there were I have a right to hold Mr. Bennett answerable as having set forth now within these two years passages in which he impugns the 29th Article of the Church of England."

The 25th article, which refers to the 7th, is in the same words as the 18th, and subject to exactly the same remarks. It refers to the 7th article; and on page 20 of the appendix the passage is found again about Mr. Keble and the Eucharistic Adoration. At the bottom of page 20

the words are:—"Archdeacon Denison maintained in various propositions the real objective presence of our Blessed Lord in the Eucharist. His doctrine was impugned, and he was cited before the Church Courts." All that has been read before, and also the passage about the Archbishop of Canterbury *in propria persona* going down to try the question. Then it goes on:—"Nothing could be shewn to prove that it was a false doctrine, or to dislodge the archdeacon from the position which he then maintained, and still does maintain, and, maintaining, is still Archdeacon of Taunton. Is it fair, then, to ignore this matter of history, these facts known universally; and, when they thus stand out unassailable, to treat them as though they never had been? Is it fair, when the doctrines have thus been proved over and over again to be true, still to recur to them, and pronounce them false, and to say that ceremonies, because they symbolize them, and draw with them a reverential worship attached to them, make us idolatrous?"

Then the pleader sets out the propositions, and he wishes to fasten his logic upon Mr. Bennett as being Mr. Bennett's logic, and to treat the propositions of Archdeacon Denison as being propositions adhered to by Mr. Bennett, upon which he is entitled to rely as impugning, on the part of Mr. Bennett, the 29th Article.

Now, I confess, having gone through those passages, it seems to me (and their Lordships appear to concur) that the articles which are to specify the doctrines impugned must specify the opinions which the clerk has advisedly maintained, and they must set forth the passages in which those opinions are maintained. It is not a compliance with those requisites to set forth other passages in works which he has approved of generally, because those works contain passages which that clerk has not by his own publication supported, maintained, or accepted in their totality and generality. No man certainly would be safe if it were to be held that, because approbation is expressed by him of a particular writer upon topics such as these, where the shades of opinion of all men are so minute, and so very delicate and refined, according to the turn

of each person's mind—he were to be made answerable for opinions as being his which are not his, but are contained in some work of the general character of which he has expressed his approbation.

It appears, therefore, to their lordships that the learned Judge was justified on that ground in directing the articles to be reformed in the particulars which he has mentioned, because the articles do not set forth the passages from Mr. Bennett's work in which Mr. Bennett maintains any doctrine impugning the 29th Article.

As to what may subsequently take place in the Court below it is not for their Lordships to pronounce an opinion. They have merely to deal with the appeal as it comes before them. They have simply to say whether the Judge was right or not in directing the articles to be reformed to the extent to which he has directed them to be reformed.

Therefore, being of the same opinion as the learned Judge, their lordships will humbly recommend to Her Majesty that the appeal be dismissed; and, as Mr. Bennett has not appeared, there will be nothing said about costs.

Proctors—Moore & Currey.

[IN THE COURT OF ARCHES.]

1870.  
June 16, 17, 18. } SHEPPARD v. BENNETT.  
July 23.

*Doctrine of the Holy Eucharist—Real Presence—Eucharistic Sacrifice—Adoration.*

*The doctrine of a visible presence of our Lord in the Holy Eucharist is at variance with all the formularies of the Church of England upon the subject, at variance with the language of the service of the Holy Communion, of the 28th Article of Religion, and of the Catechism; but to describe the mode of presence as "objective, real, actual, and spiritual" is not contrary to the law.*

*It is lawful for a clergyman to speak in some sense of the "Eucharistic Sacrifice,"*

*and therefore in some sense also of the "sacrifice offered by the priest," and the "sacrificial character" of the holy table. Where accordingly, when treating of the doctrine of sacrifice, the defendant, a clerk in holy orders, used language which was consistent with the doctrine of a sacrament of commemoration, and did not necessarily imply a sacrifice of propitiation, it was held that he had not exceeded the liberty of expression which the law allows upon the subject.*

*Though the adoration of the consecrated elements may not, the adoration of the spiritual presence of Christ in the Eucharist may lawfully be maintained, and accordingly, it does not contravene the law of the Church to thus speak of the Eucharist: "Who myself adore and teach the people to adore Christ present in the sacrament, under the form of bread and wine, believing that under their veil is the sacred body and blood of my Lord and Saviour Jesus Christ."*

This was a criminal suit promoted against the Rev. William James Early Bennett, clerk, Vicar of Frome Selwood, in the county of Somerset, and diocese of Bath and Wells, for maintaining and promulgating heretical doctrines. The heresy charged against the defendant was contained in certain works printed and published by him, entitled "Some Results of the Tractarian Movement of 1833" (an essay in a book entitled "The Church and the World"), and "A Plea for Toleration in the Church of England, in a Letter to the Rev. E. B. Pusey, D.D., Regius Professor of Hebrew, and Canon of Ch. Ch., Oxford," 2nd and 3rd editions. It was charged that in those works the defendant maintained and affirmed the following doctrine:—First, The actual presence of our Lord in the sacrament of the Lord's supper. Second, The visible presence of our Lord upon the altar or table of the holy communion. Third, That there is a sacrifice at the time of the celebration of the Eucharist. Fourth, That adoration or worship is due to the consecrated elements of the Lord's Supper.

In proof of these charges, the subjoined extracts, among others from the works in question, were relied upon:—

*"Some Results of the Tractarian Movement of 1833."*

(A.) "The real question as to the success of any work must be determined by its ultimate, not by its immediate results; by its generally pervading character, not by local or temporary failures. We must compare the position of the Church as she was before the year 1833, not with those unhappy periods when a momentary pressure was laid upon her, such as that of the Durham Letter, the Jerusalem Bishopric, or the Gorham Judgment, at all which periods the weak and the unstable fell to the ground bewildered; but we must compare 1833 with 1867. We must look at the doctrines as *then* maintained with those *now* maintained, and that *generally*; we must look at the character and lives of the clergy, at the hold which the Church has upon the poor; we must look, not at her episcopal representation in the House of Lords, but at her sacerdotal representation at her altars, and her doctrinal representation in her pulpits and her schools. When we have done this, but not till then, shall we be able to say what have been the results of the *Tracts for the Times*."

(B.) "*The doctrine of the Holy Eucharist*. Two questions are here involved; the doctrine of sacrifice and of the real presence. Dr. Newman tells us, in his *Apologia*, 'when a correspondent, in good faith, wrote to a newspaper to say that the *sacrifice* of the Holy Eucharist spoken of in the tract, was a false print for *sacrament*, I thought the mistake too pleasant to be corrected before I was asked about it.' This may be a fair representation of the doctrine held by the general average of the bishops and clergy at that time; and of course, therefore, in the *world* any idea of a sacrifice in the blessed Eucharist would have been a chimera. An act of memorial—an agape or love feast, a solemn record of Jesus' passion and death—that would have been the sum total of the general idea of the Holy Eucharist in those days."

(C.) "When Dr. Pusey, in 1843, put forth his remarkable sermon, entitled, *Holy Communion, a Comfort for the Penitent*, the world was startled. Yes:—and much more than the world: the learned university itself was startled. The sermon stated, 'The same reality of the divine gift makes it angel's food to the saint, and a ransom to the sinner. And both because it is the body and blood of CHRIST. Were it *only* a thankful commemoration of His redeeming love, or *only* a shewing forth of His death, or *only* a strengthening and refreshing of the soul, it were indeed a reasonable service, but it

could have no direct healing to the sinner. To him its special joy is, that it is his Redeemer's very broken body; it is His blood which was shed for the remission of his sins. In the words of the ancient Church, 'he drinks his ransom,' he eateth 'the very body and blood of the Lord, the only sacrifice for sin.' God poureth out for him 'the most precious blood of His only begotten; they are fed from the Cross of the Lord,' because they eat His body and blood.' For this doctrine, this holy comforting doctrine, this true Catholic doctrine—who would believe it now?—our dear friend was absolutely condemned by the University of Oxford and suspended for two years. But, patience! The learned University of Oxford had to learn as well as the rest of the world—it condemned because it was ignorant—time advanced—the same Doctor preached again when his suspension was over, and reiterated the condemned doctrine. Ten years had passed, and the same sermon was continued as though nothing had intervened, and *then* the doctrine was received. How dignified, how grand, how noble was that patient waiting for the teaching of time! The second sermon is entitled, *The Presence of Christ in the Holy Eucharist*. The sermon states, 'The presence of which our Lord speaks has been termed sacramental, supernatural, mystical, ineffable, opposed not to what is real, but to what is natural. It is a presence without us, not within us only: a presence by virtue of our Lord's words, although to us it becomes a saving presence, received to our salvation through our faith..... The word body is no figure. For our Lord says, 'This is My body;' and not so only, but 'This is My body which is given for you.' Since then it was His true body which was given for us on the Cross, it is His true body which is given to us in the Sacrament. The manner of the presence of the body is different. The body which is present is the same; for He has said, 'This is My body which is given for you.'"

(D.) "The priests or priest and deacon, formerly standing with faces opposite each other, and leaning over the altar in apparently amicable conference, now appear in their sacerdotal position, as though they were in reality occupied in the great sacrifice which it is their office to offer. Formerly, an ordinary surplice, and frequently not over clean or seemly, covered the person of the ministering priest, no difference being manifested between that and all other offering of prayer; now the ancient vestments present to crowds of worshippers the fact, that here before God's altar is something far higher,

far more awful, more mysterious, than aught that man can speak of, namely, the presence of the Son of God in human flesh subsisting. And towards this are tending all the ancient rites of the Church which are now in course of restoration. The solemn music and the smoke of the incense go up before God, assuring the world that here is no appearance only of love, but a reality and a depth which human hearts cannot fathom, nor even the angels themselves. The incense is the mediation of Jesus ascending from the altar to plead for the sins of man."

*A Plea for Toleration in the Church of England, second edition :—*

(E.) "The greater part of the priesthood does now maintain and set forth without flinching those doctrines which were then" (that is, in the year 1830) "to say the least, held in abeyance. To speak only of myself, I have worked steadily onwards as far as my humble powers have enabled me, cheered and instructed by *The Tracts for the Times*, and your own" (that is to say, the said Rev. E. B. Pusey's) "more special teaching in Oxford to '*contend earnestly for the faith once delivered unto the saints*'—that faith seeming to me to derive its whole efficacy from a right appreciation, primarily of the doctrine of the incarnation, and, depending on that, the real, and actual, and visible presence of our Lord upon the altars of our churches. Without that doctrine as containing and inferring the sacerdotal office of the priest and the sacrificial character of the altar, there would seem to me no Church at all. It could not but be that *somehow* the words of our blessed Lord must be true—'*Except ye eat the flesh of the Son of Man and drink His blood, ye have no life in you.*'"

(F.) "In proportion as the doctrines of the real presence and Eucharistic sacrifice have found their way into the faith of congregations, so have ceremonial observances increased, and have become more and more acceptable. That which I taught first in 1842 I have naturally followed up when the opportunity came; and it is now my happiness to say, that I have been enabled, with God's blessing, to realise many things in the dignified observance of the blessed sacrament which I then only dreamed of as possible. I have been enabled to revive the ancient Catholic vestments, and to use, together with them, many beautiful ceremonies, which, though of late years fallen into desuetude, always formed a part of the service of the Eucharist in olden times."

(G.) "Our Eucharistic office, instead of being, as in too many instances it used to be, mutilated, and curtailed of its fair por-

tions, and very often a mere dead piece of formalism, has become a living, real, spiritual offering of Jesus Christ upon the altar."

(H.) "Well, I do not know what others of my brethren in the priesthood may think—I do not wish to compromise them by anything that I say or do—but seeing that I am one of those who burn lighted candles at the altar in the daytime; who use incense at the holy sacrifice; who use the eucharistic vestments; who elevate the blessed sacrament; who myself adore, and teach the people to adore, the consecrated elements, believing Christ to be in them; believing that under their veil is the sacred body and blood of my Lord and Saviour Jesus Christ;—seeing all this it may be conceived that I cannot rest very much at ease under the imputations above recited."

(I.) "Is it really the case that the Church of Rome is the only communion in which men may hold the doctrines of the real presence and the eucharistic sacrifice, and be in proportion reverential in their devotions and adore God in that blessed offering? Is the Church of England to stand aloof and be singular in the aspect of a dead intellectual monotony, excluding all that has faith, passion, love, or feeling in her devotions?"

(K.) "It is not for a chasuble or a cope, lighted tapers or the smoke of incense, the mitre or the pastoral staff, that we are contending; but, as all those who think deeply on either side of the question know full well, *for the doctrines which lie hidden under them.* No one of the commonest capacity would either undergo the trouble or encounter the expense which is unavoidably connected with the proper observance of religious ceremonies, if it were only for the external show which was to be gained in them."

(L.) "The Church of England, as all Catholic churches, is agreed upon this, and, therefore, the Bishop of London, though he may not be so just, is still in his generation the wiser (if he desire at once to go to the root of the matter) not to heed the ritual but plunge at once into the doctrine. Let us ascertain, then, what the doctrine is which is brought into question. It is threefold—I. The real objective presence of Our Blessed Lord; II. The sacrifice offered by the priest; and III. The adoration due to the presence of Our Blessed Lord in the Holy Eucharist."

*A Plea for Toleration in the Church of England, third edition :—*

(M.) "I therefore send forth this third edition with as little comment as possible, and in precisely the same language as that which was used in the first and second

editions, save and except the two passages referred to, omitting also the postscript, which, by the events in the Church which have occurred in the interval, has now no bearing on the subject. The reader will observe that in the two first editions, at page 3, the words were:—*'The real actual and visible presence of our Lord upon the altars of our churches.'* In the present edition he will find at page 2 the following words substituted:—*'The real and actual presence of our Lord under the form of bread and wine upon the altars of our churches.'* He will also observe that at page 14, in the former editions, the words were:—*'Who myself adore and teach the people to adore the consecrated elements, believing Christ to be in them—believing that under their veil is the sacred body and blood of my Lord and Saviour Jesus Christ.'* He will now find the following words substituted:—*'Who myself adore and teach the people to adore Christ present in the Sacrament, under the form of bread and wine, believing that under their veil is the sacred body and blood of my Lord and Saviour Jesus Christ.'* My meaning and that which passed through my mind in writing the original passages was precisely the same as that which is now conveyed in the words substituted, but as the original words were liable to a different construction from that in which I used them, I therefore most willingly in this edition adopt another formula to express my meaning. The formula now adopted, and which, without any doubt, will convey the doctrine of the real presence, as the Church would teach it, has been suggested to me by him whose name stands at the head of this pamphlet" (the Rev. E. B. Pusey, D.D.); "one to whom the whole Church would implicitly bow and all revere. I have no hesitation in adopting his words as my own fully and completely, and on this basis am ready with him patiently to contend for the faith once delivered to the saints, and, if need be, gladly to suffer."

(N.) "The three great doctrines on which the Catholic Church has to take her stand are these:—I. The real objective presence of our Blessed Lord in the Eucharist; II. The sacrifice offered by the priest; and III. The adoration due to the presence of our Blessed Lord therein."

[The defendant did not appear, and the proceedings were carried on *in pænam*. The case was heard on the 16th, 17th, and 18th of June.]

A. J. Stephens (with him Dr. Tristram, Archibald, and B. Shaw), for the promoter, contended that on the subject of

the Lord's Supper, the doctrine which was held and taught by the Church of England was this:—That the natural body of Christ, that is the true actual human body, now, in a glorified and spiritual condition, is in Heaven, and not here. That, consequently, there is no presence of the true body of Christ in the elements at any time. That the body and blood are not present upon consecration in the elements on the altar, or in the hand of the minister. That the body of Christ is not received by the hand or mouth of the communicant, nor by any corporal mode of reception, but only in a heavenly and spiritual manner, by the means of faith alone—that is to say, the body of Christ is given by God only, and not by the priest—is eaten by the soul only, and not by the mouth. That, since the body and blood of Christ are not present in the elements on the altar, nor in the hands of the priest, there can be no offering or sacrifice of the body and blood of Christ made by the priest to God. That such supposed sacrifice of Christ by the priest is derogatory to the one single and all-sufficient sacrifice of the death of Christ, made, once for all, upon the Cross. That,—since the true substance of bread and wine remains in the consecrated elements, and may not be adored without idolatry; and since the true body and blood are in Heaven, and not in the elements, and therefore may not therein be adored,—no adoration is due, or ought to be done to or towards the sacramental elements. And that the doctrines maintained and promulgated by the defendant were consequently in direct opposition to the authoritative teaching of the Church, and contravened its formularies.

*Cur. adv. vult.*

The following judgment was delivered on the 23rd of July by

SIR R. J. PHILLIMORE.—This is a criminal suit in which the office of the judge is promoted in this Court by virtue of letters of request from the late Bishop of Bath and Wells. The promoter of the office is Mr. Sheppard, a parishioner of Frome Selwood; the defendant is the Rev. William James Early Bennett, vicar of that parish. The defendant has not appeared, and the proceedings are therefore carried on *in pænam*.

The admission of the articles was moved before me on the 26th of October, 1869 ; and on the 30th of that month I directed the articles "to be reformed, by omitting all such parts thereof as charge the respondent with contravening the 29th Article of Religion, entitled 'Of the Wicked which eat not the Body of Christ in the use of the Lord's Supper.'"

From this an appeal was prosecuted, by permission of the Court, to the Judicial Committee of the Privy Council, who on the 26th of March, 1870, affirmed the judgment of this Court ; and on the 8th of April the cause was by order in Council duly remitted to me. No further steps, however, were taken in the prosecution of the suit until the 3rd of June ; nor was the remission filed until shortly before that time, after I had thought it my duty to call attention in open Court to the delay, it being the established practice of the Court to dismiss a suit when not conducted with all reasonable expedition.

I have been informed that the delay was occasioned by an unsuccessful application to the present Bishop of Bath and Wells for further letters of request, in order to warrant a fresh charge against the defendant. I am of opinion, however, that the instrument of remission ought to have been filed immediately on execution ; and for the future I shall expect that this course be taken.

#### *Nature of the Charge.*

The defendant is charged with the maintenance and promulgation of certain heresies alleged to be contained in an essay entitled "Some Results of the Tractarian Movement of 1833," contained in a book entitled *The Church and the World* ; and also in the second and third editions of a pamphlet entitled "A Plea for Toleration in the Church of England, in a letter to the Rev. E. B. Pusey, D.D., Regius Professor of Hebrew, and Canon of Ch. Ch., Oxford." The formal evidence respecting the position of Mr. Bennett as a beneficed clerk in holy orders, and that which was requisite to establish the authorship and publication of the works in question has been duly given in this Court.

The criminal articles charge the defendant with having promulgated certain doctrines respecting the Holy Communion which may be classed under the following categories :—  
1. Opinions with respect to the presence of our Lord in the Blessed Sacrament ; 2. Opinions with respect to a sacrifice said to be offered in the administration of that Sacrament ; 3. Opinions with respect to the adoration of the consecrated elements and of our Lord in that Sacrament. It is alleged in the

criminal articles that Mr. Bennett has promulgated opinions upon all these subjects which are heretical, and which contravene the formularies of our Church.

In two former judgments I have stated that in order fully to understand and duly to construe these formularies, one fundamental truth must be borne in mind—namely, that the end and object of our Church was so to reform her doctrine and ritual as to bring them into general harmony with those of the Primitive Catholic Undivided Church.

This truth is indeed elementary to all who have studied the ecclesiastical history of England, and examined the legal foundations upon which the Church was established in these realms ; nevertheless, it is a truth to which in former litigation, perhaps I may be permitted to say, due prominence has scarcely been given, or which has been occasionally lost sight of in the multiplicity of facts and details which surround the gradual progress of that epoch which is somewhat vaguely called the Reformation in this kingdom.

It was, perhaps, never more clearly stated than in the quaint but vigorous language of the very learned Donne, when preaching on the observance of Trinity Sunday, he said, "which day, our Church, according to that peaceful wisdom, wherewithal the God of peace, of unity, and concord, had inspired her, did in the Reformation retain and continue, out of her general religious tenderness, and holy loathness to innovate anything in those matters which might be safely, and without superstition, continued and entertained. For our Church, in the Reformation, proposed not that for her end, how she might go from Rome, but how she might come to the truth ; nor to cast away all such things as Rome had depraved, but to purge away those depravations, and conserve the things themselves, so restored to their first good use.—Donne's Works, Vol. II. Ser. xlii. p. 248.

I have again drawn attention to this legal and historical fact, because on no subject, perhaps, has it a more important bearing than on the subject of the due construction of those parts of our formularies which relate to the Holy Sacraments.

#### *Historical Notice of the Formularies.*

Some historical notice of these formularies in their relation to the sacraments naturally precedes a consideration of their true meaning and construction.

Early in the year 1530 the first Confession of the Saxon Reformers was presented at the Diet in Augsburg to the Emperor Charles V. This document, known as the "Confession of Augsburg," appears to have influenced the

first formularies of faith drawn up in England after the rejection of the Papal supremacy by Convocation in 1534. The 13th Article of the Confession, "de usu sacramentorum," teaches that sacraments are not only badges (*note*) of our Christian calling, but rather signs and testimonies of God's will towards us, ordained for the purpose of exciting and confirming faith. It also condemns those who maintained that sacraments justify "ex opere operato," and neglected to teach that faith is required to the profitable use of sacraments.—Hardwick's *History of the Articles*, p. 28. The 10th Article, "De cœnâ Domini," declares that the body and blood of Christ are truly present (Wahrhaftiglich unter Gestalt des Brots und Weins im Abendmahl gegenwärtig sey) (*vere adsint*), and are distributed to the recipients. It also censures those who maintained a contrary tenet.—Hardwick's *History of the Articles*, p. 27.

Meanwhile the Church of England had her full share of the religious trouble which distracted the rest of Christendom, and during which "the favourers of the old and the new learning," according to a phrase current at that time, arranged themselves, the former under the leadership of Gardiner, Bishop of Winchester, and the latter under Cranmer and Ridley; and there sprang up a variety of sects, among which the Anabaptists were conspicuous, threatening the destruction of the Church. In 1536 appeared the ten English Articles of Religion, which were probably composed by a committee of divines, over whom Henry VIII. either personally, or by means of his Vicar-General, presided. The 4th Article was entitled the "Sacrament of the Altar," and set forth that "under the form and figure of bread and wine, which we there presently do see and perceive by outward senses, is substantially and really comprehended the very self-same body and blood of our Saviour, which was born of the Virgin Mary, and suffered upon the cross for our redemption;" that "the very self-same body and blood of Christ, under the same form of bread and wine, is corporally, really, and in very substance, exhibited, distributed, and received unto and of all them which receive the said Sacrament; and that as a consequence the Sacrament is to be used with all due reverence and honour, and after careful self-examination."—Hardwick's *History of the Articles*, p. 54.

It is very doubtful whether these Articles were ever sanctioned by Convocation; their direct influence, whatever it was, appears to have been destroyed, by the promulgation of another formulary of faith, entitled "The

Institution of a Christian Man," which was published in the following year, 1536, upon which (Hardwick's *History of the Articles*, p. 59) these articles were to a great extent engrafted. It was called the Bishops' Book, and the influence of Cranmer and Ridley prevailed when it was compiled. It contained, among other things, an exposition of the Seven Sacraments, and an article on "The Sacrament of the Altar," which taught that under the form and figure of bread and wine *verily, substantially, and really* was contained the very self-same body of our Saviour Christ which had been born and crucified; and that "the very self-same body and blood of Christ is corporally, really, and in the very substance, exhibited, distributed, and received of all them which receive the Sacrament."

In 1543, the next Formulary, entitled "The Necessary Doctrine and Erudition of a Christian Man," or "the King's Book," was published. It appears to have been approved by Convocation.—*Jenkyns' Cranmer*, I.—XXXVII., s. 188, 189 [note].—Hardwick on the *Articles*, 59 [note]. It may be observed that the account given by Burnet on this point, as indeed on many others, is loose and inaccurate.—*Archbp. Laurence, Bampton Lect.* 1. Note 4.

This work was in great measure a revised edition of the Bishops' Book; but of it Collier not unjustly observes, "it seems mostly to lose ground and reform backwards"—*Eccl. Hist.*, Vol. II., 191. In fact the influence of Gardiner caused the restoration in this work of some exclusively Roman doctrines which had been omitted in the Bishops' Book.

In the meanwhile, however, it appears that with a view to effect an agreement between the Augsburg reformers and the Church of England, thirteen Articles were compiled in 1538, under the influence of Cranmer. They never obtained any legal status, but it seems certain that they had great influence on the present Articles, if indeed they were not their groundwork.—Hardwick on the *Articles*, p. 69.

After this time, Henry VIII. carried on some negotiations with the German reformers, as to adopting in a greater or less degree the tenets of the council of Augsburg. But various circumstances gave Bishop Gardiner an ascendancy over Henry, to which we owe "the bloody statute of the Six Articles," which was enacted by convocation and Parliament in 1539 (31 Hen. 8. c. 14), and by which the belief in the doctrine of Transubstantiation was enforced. This Act was repealed by 1 Edw. 6. c. 12, in 1547.

On the accession of Edward VI. in 1547,

L

Cranmer's influence was very great, and entirely prevailed over that of Gardiner and his colleagues. In that year, it is not unimportant to observe, the first book of Homilies was put forth under the auspices of Cranmer.

In 1548, the King appointed Cranmer and other divines "to draw an order of divine worship, having respect to the pure religion of Christ in the Gospel, and to the practice of the primitive Church."

The result was, our first Prayer Book of 1548. The Act was passed early in 1549.

In 1548, Cranmer put forth on his own authority a catechism translated from the original of Justus Jonas. It was of a decidedly Lutheran character.—*Archbp. Lawrence, Bampton Lect.*, 16, 17 [note].

In 1552, the second Prayer Book was published.

In the same year appeared the forty-two Articles of religion; and Cranmer in this compilation made great use of the Augsburg confession.

The "Necessary Doctrine of a Christian Man," except in so far as it was modified by the Prayer Book, and perhaps by the Homilies, was still the standard of belief until the promulgation of the forty-two Articles. They were promulgated under the authority of the Crown in Latin and English in 1553; they were said to have been "agreed on by the Bishops and other learned and godly men." It is doubtful whether they ever received the sanction of convocation; they were not enacted by Parliament.

Cranmer and Ridley were the chief compilers of the Prayer Book and of these Articles.

In the compilation of the latter it is probable that Cranmer had the greater share.

The subject of the Holy Eucharist presented the greatest difficulty to the compilers of our formularies. Whether regard was had to the expediency of uniting reformed Churches abroad, or members of the Church at home, Cranmer's opinion on this subject inclined to that of Luther, but his erudition was chiefly if not entirely derived from Ridley.—*Hook's Lives of the Archbishops of Canterbury*, Vol. II., N.S., p. 365.

From what source this prelate derived his opinion is therefore a matter of great moment, to be hereafter considered. In this place I will only notice that there is a not unimportant difference between the Article as to the Lord's Supper in this compilation, and the Article on that subject in the compilations of 1562 and 1571.

Queen Elizabeth succeeded to the throne in 1558, and the master-mind which presided over the next compilation of the Articles was that of Archbishop Parker. The second

Prayer Book of Edward VI. was restored with certain alterations; but, though Parker was from the first anxious to recast the Articles of religion, it was not till the year 1562 that they were discussed by convocation, and having been adopted by it, were ratified by the Crown in 1563. No subscription, however, was required to the Articles till the year 1571, when it was enforced both by a Canon of Convocation and an Act of the Legislature.

It is to be observed with respect to the Articles of 1563, that the Latin copy, which was legally binding upon the clergy, did not contain the 29th Article, as to the reception of the Eucharist by the wicked. This 29th Article does, however, appear in the authorized version of the Articles of 1571, though there is reason to doubt whether it ever was comprised "in the book imprinted," to which in the most singular manner the statute 13 Eliz. c. 12 alone refers as an authority for the Articles.

The second book of the Homilies was first published in the year 1562.

The first part of the Catechism was a portion of Edward VI.'s First Prayer Book; but the latter part, which relates to the holy Sacraments, was added by the authority of James I., after the Hampton Court Conference, and was probably written by Bishop Overall, then Dean of St. Paul's; to it the present Act of Uniformity, 13 & 14 Car. 2. c. 2, gives the force of a statute.

When the last and present Prayer Book was enacted by the statute of Charles II., some alterations were made in the service of the Holy Communion which will require notice hereafter, but the Articles, Catechism, and Canons underwent no change.

#### *Historical Notice of the Doctrine of the Holy Eucharist.*

To this brief historical and legal sketch of the formularies of our Church in their relation to her doctrine of the Holy Eucharist, I will add a few words as to the position which this doctrine occupied before and during the time when these various formularies were put forth.

For more than 800 years "no curious and intricate speculations," to use Hooker's weighty language, Vol. II., p. 3, hindered or abated the faith of Christendom in the words of the Divine Founder of this Holy Sacrament. The command "Take, eat, this is my body; drink ye all of this, this is my blood," was obeyed with holy reverence, present joy, and unenquiring faith. The whole undivided Church believed in the great mys-



tery of a presence of our Lord in the Eucharist.

The language of the Fathers on this subject indeed was often ardent, mystical, and rhetorical, adapted to persuade and to induce practice rather than to convince by accurate reasoning or strict logic; and in their writings both the supporters of a carnal presence in the elements and of the doctrine of no presence have sought in later times for a confirmation of their respective tenets. But these writings, it must be remembered, were the works of men who wrote without the necessity for accurate precision of language, which an existing controversy on the subject written about imposes on the writer, for no controversy then existed as to the mode in which Christ was present in this Sacrament, though it may be observed in passing that distinct statements of a spiritual presence in the elements are to be found in these writings. *Bishop of Ely on the Articles*, pp. 679, 680.

In the middle of the ninth century, Paschasius Radbert, Abbot of the Monastery of New Corbey, in Saxony, wrote a treatise in which he maintained or was supposed to maintain that after consecration the very body and blood, the same flesh in which Christ was born and in which He died, was physically substituted for the bread and wine, which, however, still appeared to remain. The doctrine was immediately protested against; the principal opponent had been a monk of the monastery of Old Corbey, and then presided over a monastery in Amiens, by name Ratramn (sometimes erroneously called Bertram). Ratramn, at the request of Charles the Bald, examined the book of Paschasius, and answered it, maintaining that the true doctrine of the Church was a real spiritual presence of Christ under the covering or veil (*sub tegumento, velamine, specie*) of the elements. This work became, from subsequent events, of great importance to the whole Church, and especially to the Church of England.

About the year 970, Ælfric, Abbot of Malmesbury, wrote a sermon of the Pascal Lamb and of the Sacramental Body and Blood of Christ, and a letter to Wulfstone, Archbishop of York, in both of which he maintained the doctrine of Ratramn, and in the former of which he reproduced the argument and some of the principal passages of Ratramn, "*pene ad verbum*," as the learned Cave says.

From circumstances too numerous to be here stated, the new doctrine of Paschasius was uphelden at Rome, and after many struggles and much persecution was finally embodied in the Fourth Latin Council of

Lateran (A.D. 1215), by the new name, coined, as the great Canonist Suarez admits, for the purpose, of "transubstantiation."

But in the fifteenth century, and at the time of the Reformation, this doctrine was again submitted to severe scrutiny; and, as has so often happened, the arbitrary and violent conduct of Rome in attempting to force upon the consciences of men an exclusive, uncatholic, and unjustifiable definition of a holy mystery, produced every kind of variety of opinions and speculation respecting it. The Greek Church has wisely refrained from such an attempt.—See *Palmer's Treatise on the Church*, vol. i. p. 172.) Cranmer, or at least Ridley, and afterwards Parker, endeavoured to steer a safe course, looking for the beacon of Catholic and primitive teaching as their guide. The Roman system generated that state of things which Durandus not inaptly describes,—

"Corpore de Christi lis est, de sanguine lis est,  
"Deque modo lis est, non habitura modum." (1)

Germany and Switzerland teemed with differences of opinion on this subject.

The subtler doctors of Rome have sought to maintain transubstantiation by the averment that though the *property* of the elements was changed, the *accidents* of colour, shape, taste, &c., remained the same. Luther taught, or was supposed to teach, that the elements and the actual body were blended together; and his teaching has been designated, improperly, according to high authority, by the term "consubstantiation" or "impanation." Zwinglius taught that the Eucharist was a bare commemoration of the death of Christ, and the bread and wine merely tokens to remind us of His death (2).

(1) Cited by Bishop Forbes in his *Consid. modesta*, p. 380.

(2) The following verses are taken from Beaumont's "Psyche, or Love's Mystery, the intercourse between Christ and the Soul," 1642. He was Regius Professor of Divinity at Cambridge for twenty-nine years:—

"104.

"Needs will they peep into the manner how  
This hidden miracle to pass was brought,  
And madly, being not content to know  
What Christ thought fit to teach them, study  
out  
They know not what, and make this ban-  
quet prove  
A Sacrament of war, and not of love."

"105.

"Some press too near, and spy what is not there,  
Some carelessly take what is there away,  
Some will confess no miracle, for fear  
Thit consequent be ushered in, which they

It is probable that during the reign of Henry VIII., Cranmer had not ceased to believe in transubstantiation, though it is difficult to be at all certain upon this point. But with respect to Ridley, it is certain, not only that Ratramn "first pulled him by the ear" (Works, p. 206), to borrow Ridley's expression, but that he derived from the work of Ratramn (which appears to have been first printed at Geneva in 1532, and which he first became acquainted with in 1545), those opinions upon the presence which he ever afterwards maintained, and which he endeavoured, as it should seem successfully, to instil into Cranmer. — 3 *Jenkyn's Cranmer*, 143. — *Hampden's Bampton Lectures*. — 2 *Robertson's Christian Church*, 288 (note). — *Bishop of Ely on the Articles*, 704-5. — *Ridley's Works*, 166, 169.

It is perhaps even more remarkable that in the reign of Elizabeth the Anglo-Saxon Homily of Ælfric was printed by order of Archbishop Parker, who, as will presently be seen, subscribed it in company with his suffragans, as containing both the ancient and present teaching of the Church on the Presence. There are, indeed, two exceptions of passages manifestly stuffed in or "infarced," as the expression is, as a pious fraud by some believer in transubstantiation, but which were no part of the original Homily.

Upon the whole it will appear, I think, from an examination of the formularies, and from the language of the authorities which I am about to cite, that they were intended to set forth, and do set forth, the doctrine of a real spiritual Presence in the Holy Eucharist. It may be said with truth that on some formularies this doctrine is more doubtfully or more faintly impressed than on others; but the result which I have stated is not only the legal inference from the construction of all the formularies, but also especially from those which are in their nature the most important and as a matter of history, the latest in date. — *Bishop of Ely on the Articles*, 678. Though,

Resolve to stop, or that their faith should be,  
Forced to confess more than their eyes  
can see."

"107.

"Some sift existence, substance, accidents,  
Concomitance, through logic's busy sieve:  
*Trans, sub, and con*, by strange experiments  
They bould so long, that they themselves de-  
ceive:  
For whilst to win the precious flower they  
strain,  
The coarse and refuse bran is all they  
gain."

indeed, that there is a change in the holy elements after consecration, and that they then convey in a divine ineffable way the body and blood of Christ, seem necessary inferences from the language of the communion service alone.

When I come to examine the specific charges against the defendant, it will be my duty to consider whether the Church has defined in any way the mode of this Presence, and if so, whether she has defined it by an affirmative dogma, or whether she has contented herself with a declaration against particular modes, and, with the exception of those so declared against, left an entire liberty to her children upon this subject.

*Principles of Judicial Construction applicable to Cases like the present.*

The general position that the formularies of the Church do allow within certain limits a liberty of private opinion has been laid down by the Ecclesiastical Courts and by the Judicial Committee of the Privy Council. And I think it will be convenient to cite in this place the exact language which in various cases has been applied by these tribunals to this subject.

In the first reported case, that of *H. M. Procurator General v. Stone*, Lord Stowell, sitting in the Consistory of London, said:—

"I think myself bound at the same time to declare, that it is not the duty nor inclination of this Court to be minute and rigid in applying proceedings of this nature; and that if any Article is really a subject of dubious interpretation, it would be highly improper that this Court should fix on one meaning, and prosecute all those who hold a contrary opinion regarding its interpretation. It is a very different thing where the authority of the Articles is totally eluded, and the party deliberately declares the intention of teaching doctrines contrary to them."—*H. M. Proctor v. Stone*, 1 Consist. p. 428.

And in the case of *Mr. Gorham* the Judicial Committee of the Privy Council said:—

"There are other points of doctrine respecting the Sacrament of Baptism which we are of opinion are, by the rubrics and formularies (as well as by the Articles), capable of being honestly understood in different senses; and consequently we think that, as to them, the points which were left undetermined by the Articles are not decided by the rubrics and formularies, and that upon these points all ministers of the Church, having duly made the subscriptions required by law (and taking Holy Scripture for their guide), are at liberty honestly to exercise their private judgment without offence or censure.

"Upright and conscientious men cannot in all respects agree upon subjects so difficult; and it

must be carefully borne in mind that the question and the only question for us to decide, is, whether Mr. Gorham's doctrine is contrary or repugnant to the doctrine of the Church of England as by law established. Mr. Gorham's doctrine may be contrary to the opinions entertained by many learned and pious persons, contrary to the opinion which such persons have, by their own particular studies, deduced from Holy Scripture, contrary to the opinion which they have deduced from the usages and doctrines of the Primitive Church, or contrary to the opinion which they have deduced from uncertain and ambiguous expressions in the formularies; still, if the doctrine of Mr. Gorham is not contrary or repugnant to the doctrine of the Church of England as by law established, it cannot afford a legal ground for refusing him institution to the living to which he has been lawfully presented."—*Gorham v. Bishop of Exeter. The Gorham Case* by E. F. Moore, p. 471.

"In the examination of this case, we have not relied upon the doctrinal opinions of any of the eminent writers, by whose piety, learning, and ability the Church of England has been distinguished; but it appears that opinions, which we cannot in any important particular distinguish from those entertained by Mr. Gorham, have been propounded and maintained, without censure or reproach, by many eminent and illustrious prelates and divines, who have adorned the Church from the time when the Articles were first established. We do not affirm that the doctrines and opinions of Jewel, Hooker, Usher, Jeremy Taylor, Whitgift, Pearson, Carlton, Prideaux, and many others, can be received as evidence of the doctrine of the Church of England, but their conduct, unblamed and unquestioned as it was, proves, at least, the liberty which has been allowed of maintaining such doctrine."—*Gorham v. Bishop of Exeter. The Gorham Case* by E. F. Moore, p. 472.

"We express no opinion on the theological accuracy of these opinions or any of them. The writers whom we have cited are not always consistent with themselves, nor are the reasons upon which they found their positions always valid; and other writers of great eminence, and worthy of great respect, have expressed very different opinions. But the mere fact that such opinions have been propounded and maintained by persons so eminent, and so much respected, as well as by very many others, appears to us sufficiently to prove that the liberty which was left by the Articles and Formularies has been actually enjoyed and exercised by the members and ministers of the Church of England."—*Gorham v. Bp. of Exeter. The Gorham case* by E. F. Moore, p. 474.

And in the case of *Burder v. Heath*, Dr. Lushington, who had been one of the Lords of the Privy Council in the *Gorham case*, sitting as Judge of the Court of Arches, observed :—

"And I apprehend that the course to be followed is, first, to endeavour to ascertain the plain

grammatical sense of the Article of Religion said to be contravened, and if that Article admit of several meanings, without any violation of the ordinary rules of construction or the plain grammatical sense, then I conceive that the Court ought to hold that any such opinion might be lawfully avowed and maintained."

"If, indeed, any controversy arise whether any given meaning is within the plain grammatical construction, the Court must form the best judgment it can, with this assistance, as I have already said, that if the doctrine in question has been held without offence by eminent divines of the Church, then, though perhaps difficult to be reconciled with the plain meaning of the Articles of Religion, still a Judge in my position ought not to impute blame to those who hold it. That which has been allowed or tolerated in the Church ought not to be questioned by this Court."—*Burder v. Heath*, 15 Moore, p. 46.

And again the learned Judge says :—

"Before concluding, I think it right to explain why I do not advert to the many authorities which the zeal and learning of counsel have produced. My reason is this, that, in my judgment, not one of these authorities does that which was required in this case, namely, shew that some divine of eminence has held, without reproach from ecclesiastical authority, doctrines in substance the same as those Mr. Heath has promulgated; whatever opinions may have been held in the vast field of polemical divinity, I find none which support Mr. Heath or justify him. In the *Gorham case* the Judicial Committee had the advantage of being able to quote, in support of their judgment, and in justification of Mr. Gorham, passages from the writings of divines of the highest authority."—*Burder v. Heath*, 15 Moore, p. 64.

And again :—

"No explanation has been offered which in any way shews that Mr. Heath's opinions can be reconciled with the Articles, nor has any eminent divine been shewn to have shared his views. Mr. Heath therefore must be condemned by the Articles imposed by law, and which the law alone can change."—*Burder v. Heath*, Brodriick & Freemantle, Privy Council Judgments, p. 229.

In the recent case, commonly called the case of *Essays and Reviews*, Lord Westbury, delivering the judgment of the Privy Council, said :—

"Our province is, on the one hand, to ascertain the true construction of those Articles of Religion and formularies referred to in each charge, according to the legal rules for the interpretation of statutes and written instruments; and on the other hand, to ascertain the plain grammatical meaning of the passages which are charged as being contrary to or inconsistent with the doctrine of the Church, ascertained in the manner we have described."

"It is obvious that there may be matters of

doctrine on which the Church has not given any definite rule or standard of faith or opinion; there may be matters of religious belief on which the requisition of the Church may be less than Scripture may seem to warrant; there may be very many matters of religious speculation and inquiry on which the Church may have refrained from pronouncing any opinion at all. On matters on which the Church has prescribed no rule, there is so far freedom of opinion that they may be discussed without penal consequences. Nor in a proceeding like the present are we at liberty to ascribe to the Church any rule or teaching which we do not find expressly and distinctly stated, or which is not plainly involved in or to be collected from that which is written."—*Williams v. The Bishop of Salisbury*, and *Wilson v. Fendall*, Moore's P.C. Rep. (N.S.) vol. ii. p. 425.

And again his Lordship said:—

"There remained the Communion Service and the *Athanasian* Creed. The material passage in the Communion Service is in these words: 'O terrible voice of the most just judgment which shall be pronounced upon them, when it shall be said unto them, Go, ye cursed, into the fire everlasting which is prepared for the Devil and his Angels.' In like manner the *Athanasian* Creed declares that they that have done evil shall go into everlasting fire. Of the meaning of these words, 'everlasting fire,' no interpretation is given in the formularies which are referred to in the charge. Mr. Wilson has urged in his defence that the word 'everlasting' in the English translation of the New Testament, and of the Creed of *St. Athanasius*, must be subjected to the same limited interpretation which some learned men have given to the original words which are translated by the English word 'everlasting,' and he has also appealed to the liberty of opinion which has always existed without restraint among very eminent English divines upon this subject."—*Williams v. The Bishop of Salisbury*, and *Wilson v. Fendall*, Moore's P.C. Rep. (N.S.) vol. ii. p. 432.

And again:—

"We are not required, or at liberty, to express any opinion upon the mysterious question of the eternity of final punishment, further than to say that we do not find in the formularies, to which this Article refers, any such distinct declaration of our Church upon the subject, as to require us to condemn as penal the expression of hope by a clergyman that even the ultimate pardon of the wicked, who are condemned in the day of judgment, may be consistent with the will of Almighty God."—*Williams v. The Bishop of Salisbury*, and *Wilson v. Fendall*, Moore's P.C. Rep. (N.S.) vol. ii. p. 433.

*Special Charges*.—1. *Visible Presence of Our Lord in the Holy Eucharist*.

The charge against the defendant which I purpose first to consider is contained in the 15th and 16th articles, and is founded on a

passage in the second edition of his work, entitled *A Plea for Toleration*, &c. In that work he speaks "of the visible presence of our Lord upon the altars of our churches."

I have read these words with much surprise and sorrow.

If a private clergyman of the Church of England, holding no position which renders it in any way incumbent upon him to publish his opinions to the world at all, nevertheless steps out of the ordinary course of his parochial duty to discharge the office of a public writer upon the most awful mystery of our holy religion, the least that our Church has a right to expect from him is the knowledge and erudition of a theologian, and the use of the most careful and well considered language.

The great divines of our Church, feeling and knowing the mode of Christ's presence to be a mystery which is rather to be adored in the silence of the heart than made the subject of controversy, have, as it were, feared to tread when they approached the precincts of it; and, being well versed both in history and theology, knowing therefore how much hasty, ill-chosen, inadequate, and presumptuous expressions upon this subject have contributed to the schisms of Christendom, and fearful of leading others astray, have been silent, or, if it were necessary to speak, studiously guarded and reverently careful in their language.

"All things considered," says Hooker, "and compared with that success which truth hath hitherto had by so bitter conflicts with errors in that point, shall I wish that men would more give themselves to meditate with silence what we have by the sacrament, and less to dispute of the manner how? If any man suppose that this were too great stupidity and dulness, let us see whether the apostles of our Lord themselves have not done the like. It appeareth by many examples, that they of their own disposition were very scrupulous and inquisitive, yea, in other cases of less importance, and less difficulty, always apt to move questions. How cometh it to pass, that so few words of so high a mystery being uttered, they receive with gladness the gift of Christ, and make no shew of doubt or scruple."—Hooker, E. P., vol. ii., p. 3; ed. 1825.

\* \* \* \* \*

"Where God himself doth speak those things, which either for height and solemnity of matter, or else for secrecy of performance, we are not able to reach unto, as we may be ignorant without danger, so it can be no disgrace to confess we are ignorant. Such as love piety will as much as in them lieth know all things that God commandeth, but especially the duties of service which they owe to God. As for his dark and hidden works, they prefer, as becometh them in such cases, simplicity of faith before that knowledge, which curiously

sifting what it should adore, and disputing too boldly of that which the wit of man cannot search, chilleth for the most part all warmth of zeal, and bringeth soundness of belief many times into great hazard."—*Ibid.* p. 12.

Of the impropriety of his language the defendant seems to have been made aware ; but, unfortunately, not until he had committed the very rash act of publishing it to the world. I have no hesitation in pronouncing that the expression "visible presence of our Lord upon the altars of our churches" is in its plain meaning at variance with all the formularies of our Church upon the subject, at variance with the language of the service of the Holy Communion, of the 28th Article, and of the Catechism.

The doctrine which it expresses, to use the language of our Articles, "overthroweth the nature of a sacrament," even more than transubstantiation.

I may add also, that whatever figurative language may be found in the sermons of eastern Fathers before controversy arose on this subject, I have not been able to find that such a doctrine has ever been maintained in the dogmatic teaching of our own or of any other branch of the Church.

I will consider presently the legal effect of the substitution in a later edition of other language than that which I have here condemned.

## 2. *Other Modes of the Presence in the Holy Eucharist.*

I have now to consider the charges, which relate to the modes of the presence in the Eucharist, other than that which I have condemned, and which form the subject of the 8th, 9th, 10th, 11th, 14th, 17th, 21st, 22nd, 23rd, and 24th articles. I find them to be substantially as follows :—

That in the sacrament of the Lord's Supper there is an actual presence of the body and blood of our Lord in the consecrated bread and wine ;

That there is an actual presence of the true body and blood of our Lord in the sacramental bread and wine, without or external to the communicant, by virtue of, upon and after the consecration of the same, irrespectively of the faith and worthiness of the communicant, so as to be received by all communicants irrespectively of their faith and worthiness ;

That there is an actual presence of the true body and blood of our Lord in the consecrated bread and wine, without or external to the communicants prior to and separate from the act of reception by the communicants.

That in the Holy Communion the natural body and blood of our Saviour Christ are not only in heaven, but here, to wit, upon or before the altars or communion tables of the Church in the consecrated elements ;

That in the Holy Communion the natural body and blood of our Saviour Christ are not only in heaven, but here, to wit, upon or before the altars or communion tables of the Church under the form or veil of bread and wine ;

That the body and blood of our Lord are actually and objectively present upon the altars or communion tables of the Church under the form or veil of, and in the sacramental bread and wine, by virtue of, upon, and after the consecration of the same, irrespectively of the faith and worthiness of the communicant, so as to be received by all communicants irrespectively of their faith and worthiness ;

That the body and blood of our Lord are actually and objectively present upon the altars (thereby referring to the communion tables) of the Church under the form or veil of, and in the consecrated bread and wine, prior to and separately from the act of reception by the communicants.

The first question for consideration is, whether the passages extracted from the work of the defendant do contain the opinions which are so charged against him. After an attentive perusal of the passages extracted, I have arrived at the conclusion that they do not contain the opinions relating to the presence of the natural body and blood of our Saviour which are charged in the 11th, 17th, and 24th articles.

The passage which makes the nearest approach to the support of this charge is, I think, in the extract lettered D. in the 5th article, where he speaks of "the fact, that here, before God's altar, is something far higher, far more awful, more mysterious, than aught that man can speak of, namely, the presence of the Son of God in human flesh subsisting." It seems to me that the author, whose language is lamentably loose and inaccurate, did not mean by these words any more than the presence of the incarnate Son of God, and did not mean to express any opinion as to the presence of his natural flesh and blood. And this opinion is confirmed by a comparison of the passage cited with other passages in his work, such as, for instance, one of the passages cited in the articles before me, lettered G. "a living real *spiritual* offering of Jesus Christ upon the altar," and the often repeated expression that the presence of which he speaks is one under the veil of the elements of the bread and wine, and

various other passages which upon the whole lead me to the conclusion that he did not contemplate a physical or natural presence of our Lord. I therefore consider the criminal articles on this point, 11, 17, and 24, not to be proved.

With respect to the other charges, of which I have given the summary, and which are stated at length in the 8th, 9th, 10th, 14th, 21st, 22nd, and 23rd articles, I think that they do fairly represent the opinions of the defendant contained in the passages set out, with one exception, namely, the words "irrespectively of the faith and worthiness of the communicant," which appear to point to an offence against the 29th Article of religion, which was charged in the original articles and struck out by the Court. It may, however, be that these words are merely used in the sense of "prior to and separately from the act of reception by the communicants;" and if so, they seem to me to fairly represent the opinion of the defendant.

#### *Object and Intention of the Formularies.*

I have now to consider whether these opinions contravene the formularies of the Church, as contained in the passages set forth in the 28th article of charge.

The authority upon which our Church principally relied in her formularies with respect to the sacraments was that of S. Augustine. His authority is especially referred to in the articles; portions of which are indeed almost translations from his works; and Overall made the definition of S. Augustine, as subsequently moulded by the schoolmen, the basis of the doctrine on the sacrament contained in our Catechism (3). The "Sacramentum" is sometimes used as the "sacrae rei signum," although, as the 25th Article expressly asserts, a "signum efficax," as distinguished from a "signum merum," a sign, that is to say, by which, "as by an instrument" (Art. 27), the thing signified is effected. Sometimes "sacramentum" is used more explicitly for the entire "ritus," in its internal and external elements. As a rite it consists of three parts, the outward elements, which are the *signum*, the *res*, which is the inward part or thing signified, that is, as our

Catechism saith, "The body and blood which are verily and indeed taken and received by the faithful in the Lord's Supper," and the "*virtus*" or "the benefits whereof we are partakers thereby," that is the strengthening and refreshing of our "souls with the body and blood of Christ, as our bodies are by the bread and wine." It is in this way that the sacrament of the Lord's Supper is spoken of in our Catechism. Bp. Hampden in his Bampton Lectures thus remarks:—

"Theologians have not been content to rest on the simple fact of the divine ordinance, appointing certain external rites as essential parts of divine service on the part of man, available to the blessing of the receiver; but they have treated the sacraments as effusions of virtue of Christ, physically quickening and strengthening the soul, in a manner analogous to the invigoration of the body by salutary medicines. The word 'sacrament' itself, as understood in the Latin Church, is founded on this notion. Though derived from the military oath of the Romans, and so far bearing the mark of that derivation, as it denotes a solemn pledge of faith on the part of the receiver, in its established theological use it corresponded more properly with *μυστήριον* of the Greeks. It expressed, at first, accordingly, any solemn mysterious truth of religion; and afterwards, by the usage of the schools, was appropriated to those acts in particular by which grace was conceived to be imparted to the soul, under outward and visible signs. The definition indeed, given in the Catechism of the Church of England, is exactly what the scholastic theory suggests; so far, at least, as the language of it characterises the nature of a sacrament. It is in the subsequent application of this definition that the Church of England has modified and improved on the fundamental idea of the scholastic doctrine, whilst the idea itself is presented, as being part of the very texture of technical theology."—Bp. Hampden's Scholastic Philosophy, Lecture VII., p. 32. See also note B, p. 313.

The 28th Article "of the Lord's Supper" says, "The supper of the Lord is not only a sign of the love that Christians ought to have among themselves one to another, but rather a sacrament of our redemption by Christ's death;" and it adds, that to the worthy partaker the bread is a partaking of the body of Christ, and the cup a partaking of the blood of Christ; and the 29th Article says, that the wicked, "though they do carnally and visibly press with their teeth, as S. Augustine saith, the sacrament of the body and blood of Christ, yet in nowise are they partakers of Christ, but rather to their condemnation do eat and drink the sign or sacrament of so great a thing."

The first part of the Homily concerning the Sacrament contains the following passage: "Neither need we to think that such exact knowledge is required of every man

(3) *Sacrificium ergo visibile sacrificii sacramentum, id est, sacrum signum est.*—Augustin. De Civ. Dei. Lib. x. c. 5.

*Sacramentum est sacrae rei signum. Dicitur tamen sacramentum etiam sacrum secretum, sicut sacramentum divinitatis; ut sacramentum sit sacrum signans: sed nunc agitur de sacramento secundum quod est signum. Item, sacramentum est invisibilis gratiae visibilis forma.*—Lombard. Sent. Lib. iv. dist. 1.

that he be able to discuss all high points in the doctrine thereof ; but thus much we must be sure to hold, that in the supper of the Lord there is no vain ceremony, no bare sign, no untrue figure of a thing absent (Matt. xxvi.)," that is, we ought to hold affirmatively that it is the true figure of a thing present.

The doctrine contained in these formularies excludes the Zwinglian account of the sacraments. On this point I will cite the opinion of Dr. Liddon, Professor of the Exegesis of Holy Scripture in the University of Oxford, and Canon of St. Paul's.

"As our Lord's divinity is the truth which illuminates and sustains the world-redeeming virtue of His death, so in like manner it explains and justifies the power of the Christian Sacraments as actual channels of supernatural grace. To those who deny that Jesus Christ is God, the Sacraments are naturally nothing more than 'badges or tokens' of social co-operation. The one Sacrament is only 'a sign of profession and mark of difference, whereby Christian men are discerned from others that be not christened.' The other is at best 'only a sign of the love that Christians ought to have one towards another.' Thus Sacraments are viewed as altogether human acts ; God gives nothing in them ; He has no special relation to them. They are regarded as purely external ceremonies, which may possibly suggest certain moral ideas by recalling the memory of a Teacher who died many centuries ago. They help to save His name from dying out among men. Thus they discharge the functions of a public monument, or of a ribbon or medal implying membership in an association, or of an anniversary festival instituted to celebrate the name of some departed historical worthy. It cannot be said that in point of effective moral power they rise to the level of a good statue or portrait, since a merely outward ceremonial cannot recal character, and suggest moral sympathy as effectively as an accurate rendering of the human countenance in stone, or colour, or the lines of an engraving. Rites, with a function so purely historical, are not likely to survive any serious changes in human feelings and associations. Men gradually determine to commemorate the object of their regard in some other way, which may perhaps be more in harmony with their personal tastes ; they do not admit that this particular form of commemoration, although enjoined by the Author of Christianity, binds their consciences with the force of any moral obligation ; they end by deciding that it is just as well to neglect such commemorations altogether.

"If the Socinian and Zwinglian estimate of the Sacraments had been that of the Church of Christ, the Sacraments would long ago have been abandoned as useless ceremonies. But the Church has always seen in them, not mere outward signs addressed to the taste or to the imagination, nor even signs (as Calvinism asserts) which are tokens of grace received independently of them, but signs

which, through the power of the promise and words of Christ, effect what they signify. They are 'effectual signs of God's grace and goodwill towards us, by which He doth work invisibly in us.' Thus in baptism the Christian child is made 'a member of Christ, a child of God, and an inheritor of the kingdom of Heaven ;' and 'the body and blood of Christ are verily and indeed taken and received by the faithful in the Lord's Supper.' . . .

"That depreciation of the Sacraments has led with general consistency to depreciation of our Lord's Eternal Person is a simple matter of history. True, there have been and are believers in our Lord's Divinity, who deny the realities of sacramental grace. But experience appears to shew that their position is only a transitional one. For history illustrates this law of fatal declension even in cases where sacramental belief, although imperfect, has been far nearer to the truth than is the naturalism of Zwingli. Many of the most considerable Socinian congregations in England were founded by the Presbyterians who fell away from the Church in the seventeenth century. The pulpit and the chair of Calvin are now filled by men who have, alas ! much more in common with the Racovian catechism than with the positive element of the theology of the Institutes. The restless mind of man cannot but at last push its principle to the real limit of its application, even although centuries should intervene between the premise and the conclusion. Imagine that the Sacraments are only picturesque memorials of an absent Christ, and the mind is in a fair way to infer that the Christ Who is thus commemorated as absent by a barren ceremony is Himself only and purely human." — Liddon's *Bampton Lectures*, 1866 ; Lecture viii. p. 719.

I hold it to have been the intention of the formularies to exclude the Zwinglian doctrine of bare commemoration with respect to the Lord's Supper, although that error be not expressly mentioned.

The next error is, however, by name prohibited. "Transubstantiation," the Article says "(or the change of the substance of bread and wine) in the Supper of the Lord, cannot be proved by Holy Writ ; but is repugnant to the plain words of Scripture, overthroweth the nature of a sacrament, and hath given occasion to many superstitions." (Art. 28.) This is the only mode of the presence which is *eo nomine* proscribed by the Articles. And I am not therefore surprised to find that in his charge of the year 1866 to the clergy of his diocese, the Bishop of St. David's, in contrasting our Communion service with the Roman missal, and our doctrine of the Lord's Supper with that of Rome, should say :—

"And here I cannot refrain from pausing for a moment to remark, that there is perhaps no head of theological controversy in which our Church stands in more advantageous contrast with Rome, or in

M

which we have more reason thankfully to recognise her characteristic moderation, than this. The tenet of Transubstantiation, decreed as an article of faith, combines in itself the two extremes of irreverent rationalism and presumptuous dogmatism." . . . —Charge delivered by the Bishop of St. David's (1866), p. 96.

"The Church of England, on the contrary, has dealt with this subject in a spirit of true reverence as well as of prudence and charity. She asserts the mystery, inherent in the institution of the Sacrament, but abstains from all attempts to investigate or define it, and leaves the widest range open to the devotional feelings and the private meditations of her children with regard to it. And this liberty is so large, and has been so freely used, that apart from the express admission of Transubstantiation, or of the grossly carnal notions to which it gave rise, and which, in the minds of the common people, are probably inseparable from it, I think there can hardly be any description of the real presence, which, in some sense or other, is universally allowed, that would not be found to be authorised by the language of eminent divines of our Church; and I am not aware, and do not believe, that our most advanced Ritualists have in fact overstepped those very ample bounds." — Charge delivered by the Bishop of St. David's (1866), pp. 97, 98.

*Authorities as to the Construction of the Formularies relating to the Holy Eucharist.*

Having regard to the canons as to the liberty of clergymen laid down in the judgments to whom I have referred, I venture to support the position of the Bishop of St. David's with the following authorities.

And first let me begin with those two authorities, to whom I have already referred, and who demonstrate the identity of the present doctrine of the Church of England with that which she has maintained from Anglo-Saxon times upon the subject of the presence in the Eucharist.

I select the following passages from the famous treatise of Ratramn:—

"Nunc redeamus ad illa, quorum causa dieta sunt ista; videlicet, corpus et sanguinem Christi. Si enim nulla sub figura mysterium illud peragitur, iam mysterium non rite vocitatur; quoniam mysterium dici non potest, in quo nihil est abditum, nihil à corporalibus sensibus remotum, nihil aliquo velamine contextum. At ille panis qui per Sacerdotis ministerium Christi corpus efficitur, aliud exterius humanis sensibus ostendit; et aliud interius fidelium mentibus clamat. Exterius quidem panis, quod antè fuerat, forma præstenditur, color ostenditur, sapor accipitur. At interius longè aliud, multoque pretiosius multoque excellentius intimatur; quia cæleste, quia divinum, id est Christi corpus ostenditur; quo non sensibus carnis; sed animi fidelis intuitu, vel aspiciatur, vel accipitur, vel comeditur. Vinum quoque, quod *Sacerdotali consecratione* Christi sanguinis efficitur sacramentum, aliud superficie tenus ostendit; aliud interius continet.

Quid enim aliud in superficie; quam substantia vini conspicitur? Gusta, vinum sapit; Odora, vinum redolet; Inspice, vini color intuetur. At interius si consideres, jam non liquor vini, sed liquor sanguinis Christi credentium mentibus et sapit, dum gustatur; et agnoscitur, dum conspicitur; et probatur, dum odoratur. Hæc ita esse dum nemo potest abnegare, claret; quia panis ille vinumque figuratè Christi corpus et sanguis existit. Non enim secundum quod videtur, vel carnis species nullo pane cognoscitur, vel in illo vino cruoris unda monstratur: cum tamen post mysticam consecrationem nec panis, jam dicitur, nec vinum, sed Christi corpus et sanguis." — Bertrami Presbyteri *De Corpore et Sanguine Domini*, &c., pp. 9-11. Edition published at Geneva, 1541; see also English edition, published at Dublin, 1753.

"Quærendum ergo est ab eis, qui nihil hic figuratè volunt accipere, sed totum in veritatis simplicitate consistere; secundum quod demutatio facta sit: ut iam non sint quod antè fuerant, videlicet, panis atque vinum; sed sint corpus atque sanguis Christi? Secundum speciem namque creature, formamque rerum visibilibus, utrumque hoc, id est, panis et vinum, nihil habent in se permutatum." — Bertrami, pp. 13, 14.

"Sicut ergo paulò ante quam pateretur, panis substantiam et vini creaturam convertere potuit in proprium corpus quod passerum erat, et in suum sanguinem qui post fundendus extabat: sic etiam in deserto manna et aqua de petrà in suam carnem et sanguinem convertere prævaluit quamvis longè post et caro illius in cruce pro nobis pendenda, et sanguis eius in ablutionem nostram fundendus superabat." — Bertrami, pp. 23, 24.

"Item consequenter: in illo sacramento Christus est: quia corpus Christi est. Non ergo corporalis esca, sed spiritualis est. Quid apertius; quid manifestius; quid divinius? Ait enim; in illo sacramento Christus est. Non enim ait ille panis et illud vinum Christus est. Quod si diceret, Christum corruptibilem (quod abest) et mortalitati subiectum predicaret. Quidquid enim in illa esca vel cernitur vel gustatur corporaliter, corruptibilitati constat obnoxium esse. Addit, quia corpus Christi est.

"Insurgit et dicis, Ecce manifestè illum panem, et illum potum corpus esse Christi confitetur. Sed, attende quemadmodum subjungitur. Non ergo corporalis esca, sed spiritualis est. Non igitur sensum carnis adhibeas. Nihil enim secundum eum hic dæcernitur. Est quidem corpus Christi, sed non corporale, sed spirituale. Est sanguis Christi, sed non corporalis, sed spiritualis. Nihil igitur hic corporaliter, sed spiritualiter, sentiendum. Corpus Christi est, sed non corporaliter, et sanguis Christi est, sed non corporaliter." — Bertrami, pp. 40, 41.

"Ponamus adhuc unum patris Augustini testimonium, quod et dictorum fidem nostrorum astruat, et sermonis marginem ponat. In sermone quem fecit ad populum de sacramento altaris, sic inquit, Hoc quod videtis in altari Dei, jam transactà nocte vidistis. Sed quid esset, quid sibi vellet, quam magnæ rei sacramentum contineret, nondum audistis. Quod ergo videtis, panis est, et calix, quod



vobis etiam oculi vestri renuntiant: quod autem fides vestra postulat instruenda, panis, est corpus Christi; calix est sanguis Christi. Breviter quidem hoc dictum est quod fide fortè sufficiat: sed fides instructionem desiderat. Dicit enim Propheta: Nisi credideritis, non intelligetis. Potestis ergo dicere mihi, præcepisti ut credamus: expone ut intelligam. Potest enim animo cujuspiam cogitatio talis oboriri: Dominus noster Jesus Christus novim unde acceperit carnem, de Virgine scilicet Mariâ, infans lactatus est, nutritus est, crevit, ad juvenilem ætatem perductus est, à Judæis persecutionem passus est, ligno suspensus est, interfectus est, de ligno depositus est, sepultus est, tertio die resurrexit, quo die voluit, in cælum ascendit, illuc levavit corpus suum, inde venturus est judicare vivos et mortuos, ibi est modò sedens ad dexteram Patris. Quomodo panis corpus eius; et calix, vel quod habet calix; quo modo ejus est sanguis? *Ista fratres, ideo dicuntur sacramenta quia in eis aliud videtur, et aliud intelligitur.* Quod videtur speciem habet corporalem, quod intelligitur fructum habet spirituales. Ista venerabilis Author dicens, instruit nos quid de proprio corpore Domini, quod de Mariâ natum, et nunc ad dexteram Patris sedet, et in quo venturus est judicare vivos et mortuos; et quid de isto, quod super altare ponitur, et populo participatur, sentire debeamus. Illud integrum est, neque ullâ sectione dividitur, nec ullis figuris obvelatur. Hoc verò quod supra mensam Domini continetur, et figura est, quia sacramentum est: et exterius quod videtur speciem habet corpoream quæ pascit corpus: interius verò quod intelligitur, fructum habet spirituales, qui vivificat animam" (4).

(4) Bertrami, ib., pp. 61—64.

The learned Cave says, "*Bertramus*, rectius *Ratramnus*, natione ut videtur Gallus in veteri monasterio Corbeienſi monachus et presbyter tandem favente Carolo Calvo in diocesi Suessoniensi cœnobii præpositus. Claruit anno 840 quo circa tempore vel paulo ante ad scribendum se accinxit."

He wrote "De Virgine Dominum parturiente," "De Predestinatione," 849; et paulo post decantatissimum illum de *Eucharistiâ* libellum in lucem emississe videtur."

"*De Corpore et Sanguine Domini* liber in quo quam apertè quam deservè de re Eucharisticâ agit et transubstantiationis dogma prout in scholis pontificiis explicatur quam dilucidè refellit, norunt quot quot vel prima theologiæ tyrocinia posuerunt."

Then he repels the calumny of the Romanists that the word was corrupt and interpolated; and speaks of *Ælfric's* works,—

"Adversus quot fidem faciunt tot vetusti codices et *Ælfrici* nostri qui anno 960 floruit homilia Paschalis ex *Ratramni* libello pœne ad verbum desumpto."

Of *Paschasius Radbertus* (Cave says), "gente Gallus natus est anno circiter 786. Prima pietatis et doctrinæ tyrocinia posuit inter monachos qui majori monialium Suessionensium cœtui inserviebant," he entered under Adelard 844. "Præfecturam cœnobii Corbeiensis obtenuit."

Of this book of Bertram's Bishop Hampden says :—

"The opposition of controversy, whilst it led the orthodox to assert an actual presence of the incarnate Christ under the sacramental symbols of bread and wine, made them charge their adversaries with holding the sacraments to be only *signs*, memorials of Christ's passion, and not the actual oblation. And this may account for the pointed expression in one article, that 'The supper of the Lord is not only a *sign* of the love which Christians ought to have among themselves, but rather is a sacrament of our redemption.' In denying an actual communication of Christ to the sacred emblems, it became necessary to guard against the construction of asserting a merely commemorative rite, and thus evacuating the sacrament of its holy burthen of grace. For neither *Ratramn*, in opposing the doctrine of Paschase, nor afterwards *Berenger*, in advocating the views of *Erigena* against *Lanfranc*, appear to have held that the Eucharist was *nothing* more than a sign. *Ratramn*, indeed, distinctly asserts a *real* presence, though he does not admit a presence of the crucified body of Christ in the consecrated bread and wine. It is a real and true presence that he asserts, the virtue of Christ acting in the way of efficacious assistance to the receiver of the sacrament. The Church of England doctrine of the sacraments, it is well known, is founded on the views given by this author. Cramer and Ridley are said to have studied his work together, and to have derived their first ray of light on the subject from that study."—Bishop Hampden's *Bampton Lectures*, 1832.—Lecture VII. p. 320.

And the Bishop of St. David's, in his charge of 1857, remarks :—

"And as *Paschasius* and *Ratramn* no doubt frequently communicated at the same altar, so notwithstanding the wide divergency of their opinions, they may have done so with equal benefit to themselves. But the consequences of their dispute were not of slight moment, and are seen and felt at this day. *Paschasius* contributed more than any individual before *Lanfranc* to the preponderance of that belief which became the dogma of transubstantiation. *Ratramn's* treatise, as is well known, exercised a most powerful influence on the mind of *Ridley*, and was thus mainly instrumental in fixing the doctrine of the Church of England on the Eucharist, or rather in restoring that of the Anglo-Saxon Church, as expounded in exact conformity to the ideas and partly to the very words of *Ratramn*, by *Ælfric*, in the Paschal Homily, where he teaches, 'This mystery is a pledge and a symbol; Christ's body in truth. This pledge we hold mystically,

"Primus auctor (fatente ipsomet *Bellarmino* de Script. Eccles. p. 226) qui serio et copiose scripsit de veritate Corporis et Sanguinis Domini in Eucharistiâ." Cave however pronounces even of *Paschasius*, "non pauca tradere quæ cum receptâ Ecclesiæ Romanæ doctrinâ nequaquam conveniunt." ib. 32.

until we come to the truth, and then will this pledge be ended." — Mr. Thorp's *Translation*, Vol. II. p. 273, in the publications of the Ælfrie Society.

"Most justly therefore did Canon Hopkins observe (in the dissertation prefixed to his edition of the treatise, ed. 1868, c. 5, p. 105), that 'the doctrine of Ratramn was the very same doctrine which the Church of England embraced as most consonant to scripture and the fathers.' Which is not what our adversaries would put upon us, that the Sacrament of the Lord's Supper is a naked commemoration of our Saviour's death, and a mere sign of His body and blood, but an efficacious mystery, accompanied with such a divine and spiritual power as renders the consecrated elements truly, though mystically, Christ's body and blood, and communicates to us the real fruits and saving benefits of His bitter passion. And this is the doctrine of Bertram in both parts of his work." — *Appendix to Charge of Bishop of St. David's*, 1857, p. 135.

Next in order of date and importance are the works of the Anglo-Saxon Abbot of Malmesbury and St. Alban's, Ælfrie, who was, perhaps, also Archbishop of Canterbury from 995 to 1005. — *Anglia Sacra*, Vol. I. p. 125; Lingard, *Hist. and Antiq. of Anglo-Saxon Church*, Vol. II., pp. 311, 5, 99. His sermon of the "Paschall Lambe" was first printed in Saxon character, and in Queen Elizabeth's reign published, as I have already said, by Archbishop Parker, and subscribed by him and his suffragans; the object being to shew that the doctrine of the Eucharist in the English Church was not an innovation upon but a revival of the Catholic faith.

To the publication of this work Parker prefixed the following preface:—

"As the writynges of the Fathers even of the first age of the Church be not thought on all parts so perfect that whatsoever thyng hath been of them spoken ought to be received, without all exception (which honour trulye themselves both knewe and also have confessed to be only due to the most holy and tryed word of God), so in this sermon here published some thynges be spoken not consonant to sounde doctrine, but rather to such corruption of great ignorance and superstition as hath taken root in the Church of long time, being overmuch cumbered with monckery.

"As where it speaketh of the Masse to be profitable to the quick and the dead; of the mixture of water with wyne, and whereas here also is reportes made of ij vayne miracles . . . with some other suspicious words sounding to superstition. But all these things that be thus of some reprehension be as it were but by the way touched; the full and whole discourse of all the former part of the sermon and almost of the whole sermon is about the understanding of the Sacramentall bread and wine how it is the bodye and bloude of Christ our Saviour, by which is revealed and made known what hath been the common taught doc-

trine of the Church of England on this behalf many hundredth years agoe contrarye to the unadvised writyng of some nowadays. Now that thys foresaid Saxon Homely with the other testimonies before alledged doe fullye agree to the olde auncient bookes (whereof some bee written in the olde Saxon and some in the Lattynne) from whence they are taken; these here underwritten upon delegant perusing and comparing the same, have found by conference that they are truely put forth in print without any adding or withdrawing anything for the more faithful reporting of the same and therefore for the better credite thereof, have subscribed their names:—

"Matthewe, Archbishop of Canterbury; Thomas, Archbishop of York; Edmund Bishop of London; James, Bishop of Durham; Robert, Bishop of Winchester; William, Bishop of Chichester; John, Bishop of Hereford; Richard, Bishop of Elye; Edwine, Bishop of Worcester; Nicholas, Bishop of Lincoln; Richard, Bishop of St. Davys; Thomas, Bishop of Lichfield and Coventary; John, Bishop of Norwich; John, Bishop of Carlisle; Nicholas, Bishop of Bangor.

"With divers other personages of honour and credit subscribing their names, &c."

Parker entitled this book—

"A sermon of the Paschall Lambe, and of the Sacramentall Body and Bloude of Christ our Saviour, written in the olde Saxon tounge before the Conquest, and appoynted in the reigne of the Saxons to be spoken unto the people at Easter before they should receive the Communion, and now first translated into our common Englishe speche."

I select the following extracts:—

"We Christens keep Christes resurrection as the time of Easter these vii. dayes, because, through Hys sufferinge and rising we be delivered and be made clean by going to this holy housel, as Christ sayth in His Gospel, 'Verely, verely, I say unto you, ye have no life in you, except ye eate my Flesh and drinke my Bloud. He that eateth my Flesh, and drinketh my Bloud, abideth in me, and I in him, and hath the everlasting life; and I shall rise him up at the last day.' 'I am the lively bread that came down from Heaven, not so as your forefathers eate the Heavenlye bread in the wilderness and afterwarde dyed. He that eateth thys bread he liveth for ever.' He blessed bread before his sufferinge, and divided it to His disciples, thus saying: 'Eate this bread, it is my Body, and do this in my remembrance.' Also He blessed wyne in a cuppe, and said: 'drink ye all of thys. Thys is My Bloude that is shedde for many in forgeunesse of sinnes.'

"The Apostles dyd as Christ commaunded, that is, they blessed bread and wine to housell agayne afterwarde in His remembrance. Even so also their successours and all priestes by Christes commaundement doe bless bread and wine to housell in hys name with the apostolike blessing.

"Now, several men have often searched, and do yet often search, howe bread that is gathered of

corne, and through fyers heated baked, may bee turned to Christes body, or how wyne that is pressed out of many grapes is turned through any blessing to the Lordes Bloude.

"Now, saye we to suche men, that some thinges be spoken of Christ by signification, some by things certain.

"Why, then, is the holy housell called Christ's body, or his Bloude, if it be not truly that it is called? Truly, the bread and the wyne, which by the masse of the priest be hallowed shewe one thyng without to humayne understanding and an other thing they call within, to believing myndes. Without they bee sene bread and wyne both in figure and in taste: but they be truly, after the hallowing, Christes Body and Hys Bloude, through ghostly mystery. Beholde, now, we see two thynges in this one creature, after true nature, the water is corruptible water, and after ghostlye mysterie hath healing myghte. So also if we beholde the holy housell after bodely understanding, then we see that it is a creature corruptible, and mutable: if we acknowledge therein ghostlye myght, then understand we that lyfe is therein, and that it giveth immortalitie to them that eat it with believe; much is betwixt the invisible myghte of the holy housell, and the visible shupe of hys proper nature. It is naturally corruptible bread, and corruptible wyne, and is by myghte of God's worde truly Christes Bodye and Hys Bloode, not so, notwithstanding bodely but ghostlye. Much is betwixt the Body Christ suffered in and the bodye that is hallowed to housell;

his ghostly Body, which we call the housell, is gathered of many cornes, without bloude and bone, without lymme, and without soule, and, therefore, nothing is to be understode therein bodelye, but all is ghostly to be understode. Whatsoever is in that housell which giveth substance of lyfe that is of the ghostlye myghte, and invisible doing—therefore, is the holy housell called a mysterie, because there is one thing in it seene, and another thing understode—that which is ther sene, hath bodely shape, and that we do there understand, hath ghostlye myght.

"Certaynely Christes Bodye which suffered death and rose from death, never dyeth henceforth: but is eternal and impassible. The housell is temporall not eternall. Corruptible, and dealed into sundry parts; chewed between teeth, and sent into the bellye, howbeit, nevertheless, after ghostlye myght, it is all in every part. Many receive the holy bodye: and yet, notwithstanding it is so all in every parte, after ghostly mysterie; though to some man fall a lesse deale, yet there is no more myghte, notwithstanding, in the more parte, than in the lesse, because it is all in each man after the invisible myght.

"Thys mystery is a pledge and a figure, Christes body is truth itself. Thys pledge we do keepe mystically until that we be come to the truth itselfe, and then is this pledge ended. Trulye, it is so as we before have said, Christes bodye and Hys bloude, not bodelye, but ghostlye. And ye shoulde not search how it is done, but holde it in your believe that it is so done.

"Let us heare the apostles wordes about this mystery; Paule the Apostle speaketh of the old Israelites thus, writing in his Epistle to faithfull men, All our forefathers were baptised in the cloud and in the sea; and all they eat the same ghostlye meat, and drank the same ghostlye drink. They drank trulye of the stone that followed them and that stone was Christ. Neither was the stone then from which the water ranne, bodely Christ, but it signified Christ, that calleth thus to all beleaving and faithfull men: whosoever thirsteth, let him come to me and drinke. And from his bowels floweth lyuely water! This he sayde of the holy ghost, whom he receiveth which beleaveth on hym.

"The Apostle Paule, sayth that the Israelites did eat the same ghostly meate, and drink the same ghostly drinke: because the Heavenly meate that fed them forty years, and the water which from the stone did flow, had signification of Christes bodye and His bloude, that now be offered dayly in God's Church. It was the same which we now offer, not bodely, but ghostly.

"We sayd unto you, a little before, that Christ hallowed bread and wyne to housell before His suffering, and sayd, This is my body, and my bloud. Yet, he had not then suffered. But so, notwithstanding, He turned through invisible might, the bread to His own body, and the wyne to His bloude, as He before did in the wilderness, before that He was borne a man, when He turned that heavenly meat to His fleshe, and the flowing water from the stone to Hys own bloude.

"Very many ate of the Heavenly meate in the wilderness, and drank the ghostlye drinke, and were nevertheless dead, as Christ sayd. And Christ ment not the death which none can escape, but the everlastyng death which some of the folke deserved for their unbelieve.

"The Saviour sayde, He that eateth my flesh, and drinketh my blood, hath everlasting life. He bade them not to eat the body which he was encompassed with, nor the blood to drink which He shed for us; but He meant with those wordes, the holy housell, which ghostly is His body and His blood; and he that tasteth it with believing hart hath the eternal lyfe. In the old law faithful men offered to God divers sacrifices, that had foresignification of Christes body, which for our sinnes He himselfe to His heavenly Father hath since offered as a sacrifice."—*A Sermon of the Paschall Lambe, etc.* Lumley, 1849. Also printed in *Homilies of the Anglo-Saxon Church*, vol. ii., published in 1846.

I will now refer to the letter of Ælfric, already mentioned, to Wulfstone, Archbishop of York, also translated into English in the reign of Elizabeth, and commented upon by the learned Dr. Routh, as a valuable illustration of the Church's doctrine as to the Eucharist.

"Christ himselfe blessed housell before His suffering. He blessed the bread and brake thus speaking to His apostles: *Eate this bread, it is*

my body. And agayne He blessed one chalice with wyne and thus also speaketh vnto them: *Drinke ye all of this, it is myne own blood of the Newe Testament which is shed for many in forgiveness of synnes.* The Lord which halowed housel before His suffering and sayeth that the bread was His owne body and that the wyne was truly His blood, He haloweth dayly by the hands of the priest bread to His body, and wyne to His blood in ghostly mystery, as we read in bokes. And yet that lively bread is not bodely so notwithstanding: not the self same body that Christ suffered in. Nor that holy one is the Saviour's blood which was shed for vs in bodely thing, but in ghostly vnderstanding. Both be truly that bread Hys body, and that wyne also Hys blood, as was the Heauenly bread, which we call Manna, that fed forty yeres God's people. And the cleare water which did then runne from the stone in the wilderness, was truly his blood, as Paule wrote on summe of his epistles."—*Ex Aelfrici Epistola ad Wulfstanum Archiepiscopum Eboracensem, Saxonice scripta; in Anglicam linguam, regnante Elizabetha, in Latinam vero, interprete Abrahamo Wheloco, conversa.* Routh, *Scriptorum Ecclesiasticorum Opuscula*, vol ii., pp. 169–175.

The next authority to which I refer is that of Bishop Ridley. In his examination at Oxford it was articulated against him :—

"First, that thou Nicholas Ridley, in this high University of Oxford, Anno 1554, in the months of April, May, June, July, or in some one or more of them, hast affirmed, and openly defended and maintained, and in many other times and places besides, that the true and natural body of Christ, after the consecration of the priest, is not really present in the sacrament of the altar."

To this Ridley answers :—

"In a sense the first article is true, and in a sense it is false; for if you take *really* for *vere*, for spiritually, by grace and efficacy, then it is true that the natural body and blood of Christ is in the sacrament *vere et realiter*, indeed and really; but if you take these terms so grossly that you would conclude thereby a natural body having motion to be contained under the forms of bread and wine, *vere et realiter*, then really is not the body and blood of Christ in the sacrament, no more than the Holy Ghost is in the element of water in our baptism."

The answer being cavilled at, he added this explanation :—

"For both you and I agree herein, that in the sacrament is the very true and natural body and blood of Christ, even that which was born of the Virgin Mary, which ascended into Heaven, which sitteth on the right hand of God the Father, which shall come from thence to judge the quick and the dead; only we differ *in modo*, in the way and manner of being; we confess all one thing to be in the sacrament, and dissent in the manner of being there. I, being fully by God's word thereunto persuaded, confess Christ's natural body

to be in the sacrament indeed by spirit and grace, because that whosoever receiveth worthily that bread and wine receiveth effectuously Christ's body, and drinketh His blood (that is, he is made effectually partaker of His passion); and you make a grosser kind of being, enclosing a natural, a lively, and a moving body, under the shape or form of bread and wine. Now, this difference considered, to the question thus I answer, that in the sacrament of the altar is the natural body and blood of Christ *vere et realiter*, indeed and really, for spiritually, by grace and efficacy; for so every worthy receiver receiveth the very true body of Christ. But if you mean really and indeed, so that thereby you would include a lively and a moveable body under the forms of bread and wine, then, in that sense is not Christ's body in the sacrament really and indeed."

The second article of charge against him is :—

(2.) "Item, that in the year and months aforesaid thou hast publicly affirmed and defended, that in the sacrament of the altar remaineth still the substance of bread and wine."

Ridley says :—

"In the sacrament is a certain change, in that bread which was before common bread is now made a lively presentation of Christ's body, and not only a figure, but effectuously representeth his body; that even as the mortal body was nourished by that visible bread, so is the natural soul fed with the heavenly food of Christ's body, which the eyes of faith see, as the bodily eyes see only bread. Such a sacramental mutation I grant to be in the bread and wine, which truly is no small change, but such a change as no mortal man can make, but only that omnipotency of Christ's word."—*Ridley's Works*, pp. 271–4.

From his *Disputation at Oxford* I extract the following passages :—

"He that sitteth there is here present by mystery and grace: and that is holden of the godly, such as communicate here, not only sacramentally with the hand of the body, but, much more wholesomely, with the hand of the heart, and by inward drinking is received, but by the sacramental signification is holden of all men."  
—*Ridley's Works*, p. 223.

"I grant the bread to be converted and turned into the flesh of Christ; but not by transubstantiation, but by sacramental converting or turning. 'It is transformed,' saith Theophylact, in the same place, 'by a mystical benediction, and by the accession or coming of the Holy Ghost unto the flesh of Christ. He saith not by expulsion or driving away the substance of bread, and by substituting or putting in its place the corporal substance of Christ's flesh.' And whereas he saith, 'It is not a figure of the body,' we should understand that saying, as he himself does elsewhere, add 'only,' that is, it is no naked or bare figure only. For Christ is present in the mysteries; neither at any time as Cyprian saith, doth the

Divine Majesty abstract Himself from the divine mysteries." . . . —*Ridley's Works*, p. 230.

And in answer to the following argument of Curtop :—

"That which is in the cup is the same that flowed from the side of Christ.

"But true and pure blood did flow from the side of Christ :

"Ergo, His true and pure blood is in the cup,—

*Ridley* says,—*"It is His true blood which is in the chalice, I grant, and the same which sprang from the side of Christ. But how? It is blood indeed, but not after the same manner, after which manner it sprang from his side. For here is the blood, but by way of a sacrament. Again I say, like as the bread of the sacrament and of thanksgiving is called the body of Christ given for us; so the cup of the Lord is called the blood which sprang from the side of Christ; but that sacramental bread is called the body, because it is the sacrament of his body. Even so likewise the cup is called the blood also which flowed out of Christ's side, because it is the sacrament of that blood which flowed out of his side, instituted of the Lord himself for our singular commodity, namely, for our spiritual nourishment; like as baptism is ordained in water to our spiritual regeneration."*

*Curtop*.—"The sacrament of the blood is not the blood.

*Ridley*.—"The sacrament of the blood is the blood; and that is attributed to the sacrament, which is spoken of the thing of the sacrament.

\* \* \* \* \*

*Weston*.—"That is very well. Then we have blood in the chalice.

*Ridley*.—"It is true; but by grace, and in a sacrament."

From the Homily concerning the Sacrament, the first part, I take this passage :—

"Neither need we to think that such exact knowledge is required by every man, that he be able to discuss all high points in the doctrine thereof; but thus much we must be sure to hold, that in the Supper of the Lord there is no vain ceremony, no bare sign, no untrue figure of a thing absent (*Matt. xxvi.*). But, as the Scripture saith, the Table of the Lord, the bread and cup of the Lord, the memory of Christ, the annunciation of His death, yea, the communion of the body and blood of the Lord, in a marvellous incorporation, which, by the operation of the Holy Ghost (the very bond of our conjunction with Christ), is through faith wrought in the souls of the faithful, whereby not only their souls live to eternal life, but they surely trust to win to their bodies a resurrection to immortality (*1 Cor. x.*). The true understanding of this fruition and union, which is betwixt the body and the head, betwixt the true believers and Christ, the ancient Catholic fathers, both perceiving themselves and commending to their people, were not afraid to call this supper, some of them, the salve of immortality and sovereign preservative against death; other, a deific communion; other, the sweet dainties of our Sa-

viour, the pledge of eternal health, the defence of faith, the hope of the resurrection; other, the food of immortality, the healthful grace, and the conservatory to everlasting life. *Iren.* lib. iv. cap. 34; *Ignat. Epist. ad Ephes. Dionysius, Origen, Optat.; Cyp. de Cena Domini; Atha. de Pec. in Spir. Sanct.* All which sayings, both of the Holy Scripture and godly men, truly attributed to this celestial banquet and feast, if we would often call to mind, Oh! how would they inflame our hearts to desire the participation of these mysteries, and oftentimes to covet after this bread; continually to thirst for this food! Not as especially regarding the terrestre and earthly creatures which remain, but always holding fast and cleaving by faith to the Rock, whence we may suck the sweetness of everlasting salvation."

In *Jewel's Apology* I find these expressions :—

"Panem et vinum dicimus esse sana et celestia mysteria corporis et sanguinis Christi, et illis Christum ipsum, verum panem eternæ vitæ sic nobis præsentem exhiberi, ut ejus corpus, sanguinemque per fidem vere sumamus."

And again :—

"\* \* \* Nec tamen cum ista dicimus, extenuamus Cenam Domini, aut eam frigidam tantum ceremoniam esse docemus, et in eâ nihil fieri, quod multi nos docere calumniantur. Christum enim aperimus, vere *esse præsentem exhibere in Sacramentis suis*, in Baptismo ut eum induamus; in Cenâ, ut eum fide et spiritu comedamus, et de ejus cruce ac sanguine habeamus vitam æternam; idque dicimus non perfunctorie, et frigide, *sed re ipsâ et vere fieri.* . . . Christus ipse totus quantus est, offertur et traditur."

Bishop Overall, in his *Additional Notes to the Book of Common Prayer*, on the words "That we, receiving these Thy creatures of bread and wine, &c., may be partakers of His blessed body and blood," says :—

"Together with the hallowed elements of the bread and wine, we may receive the body and blood of Christ, which are truly exhibited in this Sacrament, the one as well as the other.

"These words, as I once conferred with a Papist, were mightily excepted against, because forsooth they must acknowledge no bread and wine, but a desition of the nature and being of both. My answer was, that here we term them so before consecration; after that we call them so no more, but abstain from that name, because our thoughts might be wholly taken up with the spiritual food of Christ's body and blood. So in the thanksgiving following we say, *That hast vouchsafed to feed us who have duly received these holy mysteries, with the spiritual food of the most precious body and blood of Thy Son, &c.* In the meanwhile we deny not the bread and wine to remain there still as God's creatures. And I wonder the Papists should so contend for this same *desitio panis et vini*, whenas, in their own service or

mass, they abstain not from these words, *THY CREATURES*, after consecration, as we do. See the book, *PER QUEM OMNIA DOMINE RONE CREAS!* A certain argument that the Church of Rome never meant to teach that doctrine, which private men, the late doctors and schoolmen, have brought up and propagated."—*Appendix to Nicholls on the Book of Common Prayer.*

And on the words "And if any of the bread and wine, &c." :—

"It is confessed by all divines that upon the words of the consecration, the body and blood of Christ is really and substantially present, and so exhibited and given to all that receive it, and all this not after a physical and sensible but after an heavenly and incomprehensible manner. But there yet remains this controversy amongst some of them, whether the body of Christ be present only in the use of the Sacrament and in the act of eating, and not otherwise. They that hold the affirmative, as the Lutherans (in Confess. Sax.) and all Calvinists, do seem to me to depart from all antiquity, which places the presence of Christ in the virtue and benediction used by the priest, and not in the use of eating the Sacrament."—*Appendix to Nicholls on the Book of Common Prayer.*

George Herbert, who has been called "the saintly," says :—

"The country parson, having to administer the Sacrament, is at a stand with himself how or what behaviour to assume for so holy things. Especially at communion time he is in great confusion, as being not only to receive God, but to break and administer him. Neither finds he any issue in this, but to throw himself down at the Throne of Grace, saying, Lord, Thou knowest what Thou didst, when thou appointedst to be done thus, therefore do Thou fulfil what Thou didst appoint, for Thou art not only the feast, but the way to it."—*Priest to the Sacrament.*

Archbishop Laud, in his memorable contest with the Papist Fisher, observes :—

"And for the Church of England, nothing is more plain than that it believes and teaches the true and real presence of Christ in the Eucharist."

And again—

"As for the learned of those zealous men that died in this cause in Queen Mary's days, they denied not the real presence simply taken, but as their opposites forced transubstantiation upon them, as if that and the real presence had been all one. Whereas all the ancient Christians ever believed the one, and none but modern and superstitious Christians believe the other . . . . Nay, Archbishop Crammer comes more plainly and more home to it than Frith. 'For if you understand,' saith he, 'by this word really *reipset*; that is in very deed and effectually; so Christ, by the grace and efficacy of His passion, is indeed and truly present, &c. But if by this word *really*

you understand *corporaliter*, corporally in His *natural* and *organical* body, under the forms of bread and wine, it is contrary to the holy word of God.' And so likewise Bishop Ridley. Nay, Bishop Ridley adds yet further, and speaks so fully to this point, as I think no man can add to his expression; and it is well if some Protestants except not against it. 'Both you and I,' saith he, 'agree in this; that in the Sacrament is the very true and natural body and blood of Christ, even that which ascended into heaven, which sits at the right hand of God the Father, which shall come from thence to judge the quick and the dead; only we differ *in modo*, in the way and manner of being. We confess all one thing to be in the Sacrament, and dissent in the manner of being there. I confess Christ's natural body to be in the Sacrament by spirit and grace, &c. You make a grosser kind of being enclosing a *natural body* under the shape and form of bread and wine.' So far and more, Bishop Ridley. And Archbishop Crammer confesses that he was indeed of another opinion, and inclining to that of Zuinglius, till Bishop Ridley convinced his judgment and settled him in this point . . . ."  
*Laud v. Fisher*, Cardwell's ed., Oxford, 1839, pp. 245-49.

Bishop Andrewes, in his answer to Bellarmine, says :—

"The Cardinal is not, unless willingly, ignorant, that Christ hath said, 'This is my body,' not 'This is my body *in this mode*.' Now about the object we are both agreed; all the controversy is about the *mode*. The 'This is,' we firmly believe; that 'it is in this mode' (the bread, *viz.*, being transubstantiated into the body), or of the mode whereby it is wrought, that 'it is,' whether *in*, or *with*, or *under*, or *transubstantiated*, there is not a word in the Gospel. And because not a word is there, we rightly detach it from being a matter of faith; we may place it amongst the decrees of the schools, not among the articles of faith. What Durandus is reported to have said of old (Neand. *Synop. Chron.*, p. 203) we approve of. 'We hear the word, feel the effect, know not the manner, believe the presence.' The presence, I say, we believe, and that no less true than yourselves. Of the mode of the presence, we define nothing rashly, nor, I add, do we curiously inquire; no more than how the blood of Christ cleanseth us in our baptism; no more than how in the Incarnation of Christ the human nature is united in the same Person with the Divine."—*Answer to Bellarmine*, p. 11.

Again :—

"And I may safely say with good warrant from those words especially and chiefly, which as He Himself saith of them, are 'spirit and life,' even those words, which joined to the element make the blessed Sacrament."—*Answer to Bellarmine*, p. 11.

And again :—

"All witnesses testify in favour of mutation,

immutation, transmutation, but there is no mention of *substantial*, or of substance. Nor do we deny the preposition *trans*, and we acknowledge the *elements* to be *transmuted*. But we seek in vain for *substantial*. Nor do we deny that the elements are changed by the benediction, so that the consecrated bread is not that which nature has formed, but that which the benediction has consecrated, and even changed by consecration. And we believe with Nyssen *that the nature of the bread and wine was changed*, but neither he nor we to be *transubstantiated*."—*Answer to Bellarmine*.

"Beloved," Donne says, "in the blessed, and glorious, and mysterious Sacrament of the body and blood of Christ Jesus, thou seest *Christum Domini*, the Lord's salvation, and thy salvation, and that thus far with bodily eyes, that bread which thou seest after the consecration is not the same bread which was presented before, not that it is transubstantiated to another substance, for it is bread still, (which is the heretical riddle of the Roman Church, and Satan's sophistry, to dishonour miracles by the assiduity, and frequency, and multiplicity of them,) but that it is severed, and appropriated by God in that ordinance to another use. It is other bread; so as a judge is another man upon the bench than he is at home in his own house.

\* \* \* \* \*

"Luther (speaking of the Roman Church) infers well, that since miracles are so easy and cheap, and obvious to them, as they have induced a miraculous transubstantiation, they might have done well to have procured one miracle more, a *trans-accidentation*, that since the substance is changed, the accidents might have been changed too, and since there is no bread, there might be no dimensions, no colour, no nourishing, no other qualities of bread neither, for, these remaining, there is rather an annihilation of God, in making him no God by being a contradictory God, than an annihilation of the bread, by making that which was formerly bread God himself, by that way of transubstantiation.

"But yet though this bread be not so transubstantiated, we *refuse not the words of the fathers*, in which they have expressed themselves in this mystery. Not Irenæus's *est corpus*, that that bread is his body now, not Tertullian's *fecit corpus*, that that bread is made his body which was not so before, nor St. Cyprian's *mutatus*, that that bread is changed, not Damascen's *supernaturaliter mutatus*, that that bread is not only changed so in the use, as when at the king's table certain portions of bread are made bread of essay, to pass over every dish whether for safety or for majesty; not only so civilly changed; but *changed supernaturally*; no, nor Theophylact's *transformatus est* (which seems to be the word that goes farthest of all), for this transforming cannot be intended of the outward form and fashion, for that is not changed; but be it of that internal form, which is the very essence and nature of the bread, so it is transformed, so the bread hath received a new form, a new essence, a new nature, because whereas the

nature of bread is but to nourish the body, the nature of this bread now is to nourish the soul, and therefore, *Cum non dubitavit Dominus dicere, hoc est corpus meum, cum signum daret corporis*, since Christ forbore not to say, This is my body, when he gave the sign of his body, why we should forbear to say of that bread, This is Christ's body, which is the Sacrament of his body."—*Donne's Works*, Vol. I. pp. 73, 74, 75.

Bishop Cosin, who was one of the Convocation committee which prepared our present Prayer Book, and who wrote the history of transubstantiation, observes in it :—

"3. We believe a *presence and union of Christ with our soul and body, which we know not how to call better than sacramental, that is, effected by eating*; that while we eat and drink the consecrated bread and wine, we eat and drink therewithal the body and blood of Christ, not in a corporal manner but some other way, incomprehensible, known only to God, which we call *spiritual*; for if with St. Bernard and the fathers a man goes no further, we do not find fault with a general explication of the manner, but with the presumption and self-conceitiveness of those who boldly and curiously inquire what is a spiritual presence, as presuming they can understand the manner of acting of God's Holy Spirit. We contrarywise confess with the fathers, that this manner of presence is unaccountable, and past finding out, not to be searched and pried into by reason, but believed by faith. And if it seems impossible that the flesh of Christ should descend, and come to be our food, though so great a distance, we must remember how much the power of the Holy Spirit exceeds our sense and our apprehensions, and how absurd it would be to undertake to measure his immensity by our weakness and narrow capacity, and so make our faith to conceive and believe what our reason cannot comprehend.

"4. Yet our faith doth not cause or make that presence, but apprehends it as most truly and really effected by the word of Christ; and the faith whereby we are said to eat the flesh of Christ, is not that only whereby we believe that he died for our sins (for this faith is required and supposed to precede the sacramental manducation), but more properly, that whereby we believe those words of Christ, 'This is my body;' which was St. Austin's meaning when he said, 'Why dost thou prepare thy stomach and thy teeth? Believe and thou hast eaten.' For in this mystical eating, by the wonderful power of the Holy Ghost, we do invisibly receive the substance of Christ's body and blood, as much as if we should eat and drink both visibly.

"5. The result of all this is, *that the body and blood of Christ are sacramentally united to the bread and wine*, so that Christ is truly given to the faithful; and yet is not to be here considered with sense or worldly reason, but by faith, resting on the words of the Gospel. Now it is said, that the body and blood of Christ are joined to the bread and wine, because that in the celebration of the Holy Eucharist, the flesh is given together with

N

the bread, and the blood together with the wine. All that remains is, that we should with faith and humility admire this high and sacred mystery, which our tongue cannot sufficiently explain, nor our heart conceive."—Bp. Cosin, *History of Popish Transubstantiation*, Ch. 3. Oxford Trans.

With respect to the citation of Cosin's from St. Augustine, "Believe and thou hast eaten," it is to be remarked that in the office of The Communion of the Sick the Rubric provides that if for any just impediment (several of which are specified), a man "do not receive the Sacrament of Christ's body and blood, the curate shall instruct him, that if he do truly repent him of his sins, and steadfastly believe that Jesus Christ hath suffered death upon the cross for him, and shed His blood for his redemption, earnestly remembering the benefits he hath thereby, and giving Him hearty thanks therefore, he doth eat and drink the body and blood of our Saviour Christ profitably to his soul's health, although he do not receive the Sacrament with his mouth."

Our Prayer Book follows in this, as in many other respects, the Salisbury Missal, which borrows the words of St. Augustine, "crede et manducasti."

The insertion of these words in the Salisbury Missal seems to confirm the opinion of Mr. Keble, who suggests, in the preface to his edition of Hooker's Works, that the Rubric can be meant only "for rare and extraordinary cases, cases as strong in regard of the Eucharist, as that of martyrdom, or the premature death of a well-disposed catechumen, in regard of baptism."—Hooker's Works, Vol. I., Preface, p. 87.

I return to the language of Cosin :—

"So then (to sum up this controversy by applying to it all that hath been said), it is not questioned whether the body of Christ be absent from the Sacrament duly administered according to His institution, which we Protestants neither affirm nor believe; for, it being given and received in the Communion, *it must needs be that it is present, though in some manner veiled under the Sacrament, so that of itself it cannot be seen.* Neither is it doubted or disputed whether the bread and wine, by the power of God and a supernatural virtue, be set apart and fitted for a much nobler use, and raised to a higher dignity, than their nature bears; for we confess the necessity of a supernatural and heavenly change, and that the signs cannot become Sacraments but by the infinite power of God, whose proper right it is to institute Sacraments in His Church, being able alone to endure them with virtue and efficacy. Finally, we do not say that our blessed Saviour gave only the figure and sign of His body, *neither do we deny a sacramental union of the body and blood of Christ with the sacred bread and wine, so that both are really and substantially received together,* but (that we may

avoid all ambiguity) we deny that, after the words and prayer of consecration, the bread should remain bread no longer, but should be changed into the substance of the body of Christ, nothing of the bread but only the accidents continuing to be what they were before. And so the whole question is concerning the transubstantiation of the outward elements, whether the substance of the bread be turned into the substance of Christ's body, and the substance of the wine into the substance of His blood; or, as the Romish doctors describe their transubstantiation, whether the substance of bread and wine doth utterly perish, and the substance of Christ's body and blood succeed in their place, which are both denied by Protestants."—*Hist. of Transubstantiation*, Ch. iv. § 6, p. 175.

\* \* \* "I was the more willing to be long in transcribing these things at large, out of public confessions of Churches and the best of authors, that it might the better appear how injuriously Protestant divines are calumniated by others unacquainted with their opinions, as though by these words 'spiritually' and 'sacramentally' they did not acknowledge a true and well understood *real* presence and communication of the body and blood of Christ in the blessed Sacrament. Whereas on the contrary they do professedly own it in terms as express as any can be used."—*Ibid.* pp. 168-9.

Bishop Forbes, Professor of Hebrew at Oxford and Bishop of Edinburgh in 1633, wrote a very careful and learned treatise on ecclesiastical matters, which he entitled *Considerationes Modestæ et Pacificæ*. He says :—

"Tutissima et rectissima videtur illorum Protestantium, aliorumque sententia, qui corpus et sanguinem Christi vere, realiter, et substantialiter in Eucharistia adesse, et sumi existimant, imo firmissime credunt, sed modo humano ingenio incomprehensibili, ac multo magis inexorabili, soli Deo noto, et in scripturas nobis non revelato, non quidem corporali, et per oralem sumpcionem, sed neque etiam solo intellectu, ac pura puta fide, sed alia ratione, soli Deo, ut dictum est, cognito, illiusque omnipotentis relinquenda."

\* \* \* \* \*

"In cœna enim per admirabilem virtutem Spiritus Sancti, invisibiliter substantiæ corporis Christi communicamus, ejus participes efficimur, haud secus ac si visibiliter panem et sanguinem ejus ederemus et biberemus. In baptismo lavacrum est, sed hic alimentum. Baptismus ingressus est in Ecclesiam. Coena nutrimentum in ecclesiâ et conservatio. Baptismus est salus, Sacramentum corporis Christi vita (ut ait Aug. *De Peccatorum Merit. et Remiss.* lib. 1. c. 24. Vide P. Picherellum *De Missa*, pag. 208 et 210), et ad mysticam manducationem verum Christi corpus non tantum animæ, sed etiam corpori nostro, spiritualiter tamen, hoc est, non corporaliter, exhibetur, et sane alio ac diverso, nobisque propinquiore modo, licet occulto, quam per solam fidem : ut recte Arch. Spalat. ubi supra, pag. 237). 'Et licet Johan. cap. 6. de esu sacramenti non agat, etc. inquit P. Picher., pag. 193, tamen de eadem carnis Christi manducatione spirituali, mysticaque



cum Christo conjunctione; illic certe per fidem de conjunctionis initio; in Sacramento autem conjunctionis majore propinquitate, augmento, confirmatione, et strictiore arctioreque vinculo loquitur. Et fides qua proprie Christi caro in Eucharistia spiritualiter, h.e. incorporaliter, manducatur non est ea sola, ut quidam dicunt, qua Christus pro peccatis nostris crucifixus et mortuus creditur; Ea enim fides præsupponitur quidem et prærequiritur sacramentali manducationi sed non est ejus propria; sed ea fides est qua creditur verbo Christi dicentis, Hoc est corpus meum, etc. *Credere enim Christum ibi esse præsentem*, etiam carne vivificatrice, et desiderare eam sumere, nimirum hoc est spiritualiter et recte eam manducare in Eucharistia: unde Aug. super Joan. tract. 25. Quid paras dentem et ventrem? crede et manducasti, etc. ut doctiores norunt et notant.

"Denique gravissime erratur, quando Christum non esse realiter in Eucharistia, hisce ratiunculis urgetur. Christus est in coelo, loco circumscriptus, etc. igitur non est reipesa vel realiter in Eucharistia. Nemo enim sanæ mentis, Christum e coelo vel e dextra patris descendere visibiliter aut invisibiliter, ut in coena vel siquis localiter adsit, existimat. Fideles omnes unanimi consensu et uno ore profitentur se firmiter retinere articulos fidei, Ascendit in coelos, sedet ad dextram Patris, et modum hujus præsentie credere se non esse naturalem, corporalem, carnalem, localem per se, etc., absque ulla tamen colorum desertione, sed supernaturalem, vide scripta Buceri Anglica, pag. 648, etc. Nimis tamen audacter quamplurimi, multis retro sæculis, atque imprimis hoc nostro rixosissimo; nimis inquam audacter, imo plus satis crasse et materialiter de præsentie modo loquuti sunt, hodieque loquuntur, quem nos infinitæ Dei sapientie et potentie omnino relinquendum censemus."—*Considerationes Modeste et Pacificæ*. Ed. 1658, pp. 374, 387.

Jackson, President of Corpus Christi College, Oxford, and Dean of Peterborough, (1638), perhaps the most learned of our divines, says:—

"This distillation of life, and immortality from his glorified human nature, is that which the ancient and orthodoxal Church did mean in their figurative and lofty speeches of Christ's real presence, or of eating his very flesh, and drinking his very blood in the Sacraments. And the sacramental bread is called *his body* and the sacramental wine *his blood*, as for other reasons, so especially for this, that the *virtue* or influence of his bloody sacrifice"—the distinction to which I have adverted must be here borne in mind between the *res* and the *virtus sacramenti*—"is most plentifully and most effectually distilled from heaven unto the worthy receivers of the Eucharist, and unto this point and no further will most of the testimonies reach, which Bellarmine in his books of the Sacraments, or Maldonate in his Comments upon the Sixth of St. John, do quote out of the fathers for Christ's real presence by transubstantiation; or which Chemnitius, that learned Lutheran, in his books, *De duabus in Christo Na-*

*turis* and *De Fundamentis sanæ Doctrinæ*, doth avouch for consubstantiation. And if this much had been as distinctly granted to the ancient Lutherans, as Calvin in some places doth, the controversy between the Lutheran and other reformed Churches had been at an end when it first began; both parties acknowledging St. Cyril to be the fittest umpire in this controversy."—*Jackson's Works*, vol. x. pp. 41–2. Oxford Edition, 1844.

One of the most important writings of St. Cyril, to whom Dr. Jackson refers, is his letter written to Nestorius, which was afterwards the basis of the decree of the Council of Ephesus (A.D. 431) which Council condemned the heresy of Nestorius with respect to the human nature of our Lord. One of the arguments adduced in this letter for the true doctrine is derived from the admitted presence and partaking of our Lord's body in the holy Eucharist; and the distinction is established between the body of our Lord, which is life-giving, and the body of a man, however holy, which is not.

The whole passage is as follows. It is one of those collected by the learned Dr. Routh in his work intended to show the close connection between our Church and the Primitive Church, and deserves careful consideration:—

Ἀναγκαιὸς δὲ κἀκείνῳ προσθήσομεν καταγγέλλοντες γὰρ τὸν κατὰ σάρκα θάνατον τοῦ μονογενοῦς Υἱοῦ τοῦ Θεοῦ, τὸν τέστιν Ἰησοῦ Χριστοῦ, τὴν τε ἐκ νεκρῶν ἀναβίωσιν, καὶ τὴν εἰς οὐρανὸς ἀνάληψιν ὁμολογοῦντες, τὴν ἀναμάρτητον ἐν ταῖς Ἐκκλησιαῖς τελούμενην θυσίαν· πρόσμιν τε οὕτω ταῖς μυστικαῖς εὐλογίαις καὶ ἁγιασμοῖς, μέτοχοι γενόμενοι τῆς τε ἁγίας σαρκὸς, καὶ τοῦ τιμίου αἵματος τοῦ πάντων ἡμῶν Σωτῆρος Χριστοῦ, καὶ οὐχ ὡς σάρκα κοινὴν δεχόμενοι· μὴ γένοιτο· οὔτε μὴν ὡς ἀνδρὸς ἡγιασμένου, καὶ συναφθέντος τῷ Λόγῳ κατὰ τὴν ἐνότητά τῆς ἁγίας, ἡγουν ὡς θέλει ἐννοήσιν ἐσχηκός, ἀλλ' ὡς ζῶσποιον ἀληθῶς, καὶ ἰδίαν αὐτοῦ τοῦ Λόγου. Ζῶν γὰρ ὢν κατὰ φύσιν ὡς Θεός, ἐπειδὴ γέγονεν ἐν πρὸς τὴν ἑαυτοῦ σάρκα, ζῶσποιον ἀπέφηνεν αὐτὴν ὥστε κἀν λέγει πρὸς ἡμᾶς, Ὑμῖν ἀμὴν λέγω ὑμῖν, ἐὰν μὴ φάγητε τὴν σάρκα τοῦ Υἱοῦ τοῦ ἀνθρώπου, καὶ πίνετε αὐτοῦ τὸ αἷμα, οὐχ ὡς ἀνθρώπου τῶν καθ' ἡμᾶς ἐνδὸς καὶ αὐτὴν εἶναι λογιούμεθα, πῶς γὰρ ἡ ἀνθρώπου σὰρξ ζῶσποιος ἐστὶ κατὰ φύσιν τὴν ἑαυτῆς; ἀλλ' ὡς ἰδίαν ἀληθῶς γενομένην τοῦ δι' ἡμᾶς καὶ υἱοῦ καὶ ἀνθρώπου γεγονότος τε καὶ χρηματισσατος. (Z).—Routh, *Scriptorium Ecclesiasticorum Opuscula*, vol. i. p. 25.

The Council of Ephesus is one of the "first Four General Councils" referred to in 1 Eliz. c. 1. § 35.

Bishop Ken, whose name needs no introduction, in his exposition of the Church Catechism, uses this language:—

As to "Parts outward."

"Glory be to Thee, O adorable Jesus, who, under the outward and visible part, the 'bread

and wine,' things obvious and easily prepared, both which 'thou hast commanded to be' received, dost communicate to our souls the mystery of divine love, the 'inward and invisible grace,' Thy own most blessed 'body and blood, which are verily and indeed taken and received by the faithful in Thy Supper;' for which all love, all glory, be to Thee."

As to "Real presence."

"I believe, O crucified Lord, that 'the bread which we break,' in the celebration of the Holy Mysteries, is the communication of Thy body, and the cup of blessing which we bless is the communication of Thy blood; and that Thou dost as effectually and really convey Thy body and blood to our souls by the bread and wine, as Thou didst Thy Holy Spirit, by Thy breath and Thy disciples; for which all love, all glory, be to Thee.

"Lord, what need I labour in vain to search out the manner of Thy mysterious presence in the Sacrament, when my love assures me Thou art there? All the faithful who approach Thee with prepared hearts, they well know Thou art there; they feel the virtue of divine love going out of Thee to heal their infirmities and to inflame their affections; for which all love, all glory, be to Thee.

"O holy Jesus, when at Thy altar I see the bread broken and the wine poured out, 'O teach me to discern Thy body there;' O let those sacred and significant actions create in me a most lively remembrance of Thy sufferings; how Thy most blessed body was scourged, and wounded, and bruised, and tormented; how Thy most precious blood was shed for my sins, and set all my powers on work to love Thee, and to celebrate Thy love in thus dying for me."—*Ken's Prose Works*, p. 324.

Bishop Jeremy Taylor, whose authority was much relied on by counsel for the promoter, says:—

"Some so observe the literal sense of the words that they understand them also in a natural. Some so alter them by metaphors and preternatural significations, that they will not understand them at all in a proper way. We see it, we feel it, we taste it, and we smell it to be bread; and by philosophy we are led into a belief of that substance whose accidents these are, as we are to believe that to be fire which burns, and flames, and shines. But Christ also affirmed concerning it, *This is my body*: and if faith can create an assent as strong as its object is infallible, or can be as certain in its conclusions as sense is certain in its apprehensions, we must at no hand doubt but that it is Christ's body. Let the sense of that be what it will, so that we believe those words and (whatsoever that sense is which Christ intended) that we no more doubt in our faith than we do in our sense, and then our faith is not reproveable. It is *hard* to do so much violence to our *sense* as not to think it *bread*; but it is more *unsafe* to do so much violence to our *faith* as not to believe it to be Christ's Body. But it would be considered that no interest of religion, no saying of Christ, no reverence of opinion, no sacredness of the mystery is disavowed,

if we believe both what we *hear* and what we *see*. He that believes it to be *bread*, and yet *verily* to be *Christ's Body*, is only tied also by implications to believe God's omnipotence, that he who affirmed it can also verify it. And they that are forward to believe the change of substance can intend no more, but that it be believed verily to be the Body of our Lord. And if they think it impossible to reconcile its being bread with the verity of being Christ's Body, let them remember that themselves are put to more difficulties, and to admit of more miracles, and to contradict more sciences, and to refuse the testimony of *sense*, in affirming the special manner of transubstantiation. And therefore it were safer to admit the words in their first sense, in which we shall no more be at war with reason, nor so much with sense, and not at all with faith. And for persons of the contradictory persuasion, who to avoid the natural sense, affirm it only to be figurative, since their design is only to make this Sacrament to be Christ's Body in the sense of *faith*, and not of *philosophy*, they may remember that its being really present does not hinder, *but that all that reality may be spiritual*; and if it be Christ's Body, so it be not affirmed such in a natural sense and manner, it is still only the object of faith and spirit; and if it be affirmed only to be spiritual, there is then no danger to faith in admitting the words of Christ's institution, *This is my Body*. I suppose it to be a mistake to think whatsoever is real must be natural, and it is no less to think spiritual to be only figurative; that is too much, and this is too little; philosophy and faith may well be reconciled, and whatsoever objection can invade this union may be cured by modesty."

And again:—

"In the Sacrament that body which is reigning in heaven is exposed upon the *table of blessing*, and his body which was broken for us is now broken again, and yet remains impassable. Every consecrated portion of bread and wine, does exhibit Christ entirely to the faithful receiver, and yet Christ remains one, while He is wholly ministered in ten thousand portions; so long as we call these mysterious, and make them intricate to exercise our faith, and to represent the wonder of the mystery, and to increase our charity, our being inquisitive into the abyss can have no evil purposes. God hath instituted the rite in visible symbols to make the secret grace as present and discernible as it might, that by an instrument of sense our spirits might be accommodated as with an exterior object to produce an eternal act. But it is the prodigy of a miraculous power by instruments so easy to produce effects so glorious; this then is the object of *wonder* and *adoration*."—*Life of Christ*.

And again:—

"This may suffice for the word '*real*,' which the English Papists much use, but, as it appears, with much less reason than the sons of the Church of England; and when the real presence is denied, the word '*real*' is taken for '*natural*,' and does

not signify 'transcendenter,' or in his just and most proper signification. But the word 'substantialiter' is also used by Protestants in this question, which I suppose may be the same with that which is in the Article of Trent, 'Sacramentaliter præsens Salvator substantiâ suâ nobis adest,' 'in substance, but after a Sacramental manner:' which words if they might be understood in the sense in which the Protestants use them, that is really, truly, without fiction or the help of fancy, but 'in rei veritate,' so, as Philo calls spiritual things *ἀνεγκύριστα ὀνόματι*, 'most necessary, useful and material substances,' it might become an instrument of a united confession.

\* \* \* \* \*

"One thing more I am to note in order to the same purposes; that, in the explication of this question, it is much insisted upon, that it be inquired whether, when we say we believe Christ's body to be 'really' in the Sacrament, we mean, 'that body, that flesh, that was born of the Virgin Mary,' that was crucified, dead and buried? I answer, I know none else that He had, or hath: there is but one body of Christ, natural, and glorified; but he that says, that body is glorified, which was crucified, says it is the same body, but not after the same manner: and so it is in the Sacrament; we eat and drink the body and blood of Christ, that was broken and poured forth; for there is no other body, no other blood, of Christ; but though it is the same which we eat and drink, yet it is in another manner: and therefore, when any of the Protestant divines, or any of the fathers, deny that body which was born of the Virgin Mary, that which was crucified, to be eaten in the Sacrament—as Bertram, as St. Jerome, as St. Clemens Alexandrinus, expressly affirm; the meaning is easy; they intend it is not eaten in a natural sense; and then calling it 'corpus spirituale,' the word 'spiritual' is not a substantial predication, but is an affirmation of the manner, though in disputation it be made the predicate of a proposition, and the opposite member of a distinction. 'That body which was crucified, is not that body that is eaten in the Sacrament'—if the intention of the proposition be to speak of the eating it in the same manner of being; but 'that body which was crucified, the same body we do eat,'—if the intention be to speak of the same thing in several manners of being and operating: and this I noted, that we may not be prejudiced by words, when the motion is certain and easy: and thus far is the sense of our doctrine in this article."—*Life of Christ*, p. 427.

And again :—

"And certainly he could on no pretence have challenged the appellative of Christian, who had dared either himself to invade the holy rites within the cancels, or had denied the power of celebrating this dreadful mystery to belong only to sacerdotal ministrations. For either it is said to be but common bread and wine, and then, if that were true indeed, anybody may minister it, but then they that say so are blasphemous, they count

the blood of the Lord *τὸ αἷμα τοῦ Θεοῦ διαθήκῃς* (as St. Paul calls it in imitation of the words of institution), the Blood of the Covenant or New Testament, a profane or common thing; they discern not the Lord's body; they know not that the bread which is broken is the communication of the Lord's body. But if it be a holy, separate, or divine and mysterious thing, who can make it (ministerially I mean), and consecrate or sublime it from common or ordinary bread, but a consecrate, separate, and sublimed person?"

And further :—

"And certainly there is not a greater degree of power in the world than to remit and retain sins, and to consecrate the sacramental symbols into the mysteriousness of Christ's body and blood; nor a greater honour than that God in heaven should ratify what the priest does on earth, and should admit him to handle *the sacrifice of the world*, and to present the same which in heaven is presented by the eternal Jesus."—*Clerus Domini. The Divine Institution and Necessity of the Office Ministerial*, written by the especial command of King Charles I., sec. 5. Heber's edition, vol. xiv. p. 452-459.

Dr. Hey, Norrisian Professor of Divinity, in his lectures on the Articles, observes :—

"*Latimer*, in the Disputation at Oxford in 1554 (or in the *Paper* which he gave in), said that he maintained the *real* presence of Christ in the Eucharist, but not the *corporeal* (see Fox, or Collier, A.D. 1554). Archbishop Secker (Lect., vol. ii. p. 251) says, the Church has always acknowledged the *real* presence. Yet Wheatley (page 320) says it (real essential presence of Christ's natural flesh and blood) was not allowed at first; in the time of Edward VI. it seemed to approach so near transubstantiation. Fulke, on Heb. i. 6, denies reality of Christ's *corporeal* presence. Queen Elizabeth seems to have been willing to comprehend as many as possible in the new English Church; and with that view to have endeavoured to use a language which all might adopt who did not profess transubstantiation in the strictest sense, and which might nevertheless be used by those who did not admit any presence of Christ in the Eucharist perfectly corporal. Such language would comprehend all Lutherans, and some Papists. I think this remark will be sufficient to account for the change of the expressions in the 28th of our present Articles (on which Bishop Burnet speaks judiciously), and for the language in the second Book of Homilies, both as to the word '*Incorporation*' and the insisting on *Faith* and *spiritual* eating of the Sacrament."—*Hey's Lectures in Divinity*, vol. iv. p. 331.

Bishop Pearson, in his great work on the Creed, observes :—

"Vain, therefore, was that old conceit of Eutyches, who thought the union to be made so in the natures, that the humanity was absorbed and wholly turned into the Divinity, so that by that transubstantiation the human nature had no longer

being. And well did the ancient fathers, who opposed this heresy, make use of the Sacramental union between the bread and wine and the body and blood of Christ, and thereby shewed that the human nature of Christ is no more really converted into the Divinity, and so ceaseth to be the human nature, than the substance of the bread and wine is really converted into the substance of the body and blood, and thereby ceaseth to be both bread and wine; from whence it is by the way observable, that the Church in those days understood no such doctrine as that of transubstantiation."—*Bishop Pearson on the Creed*, Article III., vol i. p. 258. Burton's edition.

Saravia was successively Prebendary of Gloucester, Canterbury, and Westminster. He was in 1607 one of the translators of the Bible. He lived on terms of intimate friendship with Hooker, as Isaac Walton relates. He wrote in Latin a treatise on the Holy Eucharist, which has been recently translated. He says :—

"In a Sacrament there be three things to be considered which be severally to be distinguished. The outward visible sign, and the invisible and heavenly thing united sacramentally to the sign. The third thing, that which floweth from them, is the benefit of the Sacrament. Concerning those two parts Augustine saith, 'What we say is this—what we endeavour by every means to prove is this—namely, that the sacrifice of the Church is made up of two things, consisteth of two things, the visible form of the Elements and the invisible flesh and blood of our Lord Jesus Christ—that is of the 'Sacramentum,' and of the 'Res Sacramenti'—that is the body of Christ. Now orthodox divines declare that the virtue of the Sacrament is a different thing from the Sacrament itself—that is a different thing from those two parts of which the Sacrament is made up. Augustine writeth upon the Gospel of St. John: 'For now also,' he saith, 'we receive the spiritual food; but the Sacrament is one thing, the virtue of the Sacrament is another.' The same father in the same place: 'If any one shall eat of It, he shall not die: but this pertaineth to the virtue of the Sacrament, not to the visible Sacrament.' Therefore the Sacrament is to be considered apart by itself, as it consisteth of the visible form of the elements and the invisible flesh and blood of our Lord Jesus Christ."—*Treatise of the Holy Eucharist*, p. 23. London, 1855.

Bishop Andrewes again, in his Apology for the answer which I have already cited to Bellarmine, says :—

"Now, Ambrose says that the nature is changed; and so indeed it is. For, as the Cardinal knows full well, the nature of the element is one, that of the Sacrament is another. Nor do we deny that the nature of the element is changed by the benediction, so that the bread as soon as consecrated is no longer the bread as nature formed it, but as the benediction has consecrated it; and by consecration also changed."—Page 263.

"Again, that grave author (who bears the name of Cyprian, yet is not Cyprian) says, that 'the bread is changed in nature not in appearance;' which we deny not, but deprecate the Cardinal's gloss upon it, explaining, 'the nature, i.e. the substance; and the appearance, i.e. the substance.' For, when the Almighty Power of the Word is added, the nature is changed, so that what was before a bare element now becomes a divine Sacrament, retaining, however, its former substance. This is taught by the words which immediately succeed, which are part of the same sentence, although by you they are always, not very honestly, cut out. As in the person of Christ both the humanity was manifest and the divinity concealed; so the divine essence, the visible Sacrament, enters. Verily, the conjunction between the visible Sacrament and the invisible subject-matter of the Sacrament is the same as that which exists between the humanity and the divinity of Christ, where, unless you are willing to savour of the doctrine of Eutyches, the humanity is not transubstantiated into the divinity."—Page 265.

"Both of them, Gelasius and Theodoret, argue against Eutyches; and from their testimony it is clear that the transmutation which takes place in the Sacrament is not a change of substance. I add also Augustine—'This is what we assert and approve of by all means; that the sacrifice of the Eucharist consists of two things, the visible appearance of the elements and the invisible flesh and blood of our Lord Jesus Christ, of the Sacrament and the subject-matter of the Sacrament, even as the person of Christ is evidently made up of God and man; since Christ is truly God and truly man. For everything contains the nature and truth of these things of which it is made up. But the Sacrament of the Church is made up of two things, namely, the Sacrament and the subject-matter of the Sacrament, that is, the Body of Christ.'"—Page 265.

Brevint, who died Dean of Lincoln about 1695, published a work called *Christian Sacrament and Sacrifice*, in which he says :—

"Hence it appears what crime it is not to discern the Lord's Body. It is to do worse than Esau did who sold his birthright for a trifle. It is to value at the same rate the anointing of a prophet and the composition of a performer. It is to take the Lord's Body for a despicable morsel of bread; in a word, it is to perform the action of a beast that devours but the gross and earthy matter of this Sacrament, and to have nothing of a Christian or rational creature who elevates his soul to that Body which by Christ's institution it represents, and to the grace of that Body which it promises. For, since the proper essence of sacred signs or Sacraments consists not in what they are in their nature, but in what they signify by divine institution, hence it happens infallibly that when the Sacraments are abused, the injury must needs light not upon them in their own natural being, bread, wine, and water, which upon this account are not at all considerable, but upon the Holy Mysteries, the Body and Blood of

Christ Himself who is the main object of their formal being, that is, their signification. And therefore the Apostle speaks most exactly when he says that whosoever eats of this bread unworthily, doth not discern or doth not sanctify, but uses as a common and profane thing the very Body of Jesus Christ."—*Christian Sacrament and Sacrifice*, s. v. s. 9.

Thorndike, Master of Sidney Sussex College, Prebendary of Westminster, one of the Commissioners at the Savoy Conference for revising the Book of Common Prayer, in his *Laws of the Church*, says:—

"But if I allow them that make it more than such a sign to have departed from a pestilent conceit, and utterly destructive to Christianity, I cannot allow them to speak things consequent to their own position when they will not have these words to signify that the elements are the body and blood of Christ *when they are received*, but *become so upon being received with living faith*; which will allow no more of the body and blood of Christ to be in the Sacrament than out of it. For the act of living faith importeth the eating and drinking of the flesh and blood of Christ, no less without the Sacrament than in it. . . . If 'This is my Body,' 'This is my Blood,' signifieth no more than 'This is the sign of my Body and Blood,' then is the Sacrament of the Eucharist a mere sign of the body and blood of Christ, without any promise of spiritual grace; seeing that, being now a Sacrament, by being become a Sacrament it is become no more than *a sign*, of the body and blood of Christ, which, though a living faith spiritually eateth and drinketh when it receives the Sacrament, yet it should have done no less without receiving the same."—*Laws of Church*, Book III. Ch. ii., p. 6, 1st edition, 1659.

"As the eating and drinking of Christ's flesh spiritually by faith presupposes the flesh of Christ crucified and His blood poured forth, so must the eating of it in the Sacrament presuppose the being of it in the Sacrament, to wit, by the being and becoming of it a Sacrament; unless a man can spiritually eat and drink the flesh and blood of Christ in and by the Sacrament, which is not in the Sacrament when he eats and drinks it, but by his eating and drinking of it comes to be there.

"But if the flesh and blood of Christ be not there by the virtue of the consecration of the elements into the Sacrament, then cannot the flesh of Christ and His blood be said to be eaten and drunk in the Sacrament, which are not in the Sacrament by being a Sacrament, but in him that eats and drinks it. For that which he finds to eat and drink in the Sacrament cannot be said to be in the Sacrament, because it is in him that spiritually eats and drinks it by faith. Either, therefore, the flesh and blood of Christ cannot be eaten and drunk in the Eucharist, or it is necessarily in the Sacrament *when it is eaten and drunk in it*; in which if it were not, it could not be eaten and drunk in it."—*Laws of Church*, Book III. Ch. ii., page 8.

"If these things be true, it will be requisite that we acknowledge a change to be wrought in the elements by the consecration of them into the Sacrament. For how should they come to be *that which they were not before*, to wit, *the Body and Blood of Christ*, without any change? And in regard of this change the elements are no more called by the name of their nature and kind after the consecration, but by the name of that *which they are become*. Not as if the substance thereof were abolished, but *because it remains no more considerable to Christians*; who do not, nor are to look upon, this Sacrament with any account of what it may be to the nourishment of their bodies by the nature of the elements, but what it may be to the nourishment of their souls by the Spirit of God assisting in and with His Flesh mystically present in it. But this change *consisting in the assistance of the Holy Ghost which makes the elements in which it dwells the Body and Blood of Christ*, it is not necessary that we acknowledge the bodily substance of them to be any way abolished."—*Laws of Church*, Book III., Ch. ii., p. 16.

And again,—

"It is not here to be denied that all ecclesiastical writers do with one mouth bear witness to the presence of the Body and Blood of Christ in the Eucharist, neither will any of them be found to ascribe it to *anything but the consecration*, or that to any faith but that upon which the Church professeth to proceed to the celebrating of it. And upon this account when they speak of the elements supposing the consecration to have passed upon them, they always call them by the name, not of their bodily substance, but of the body and blood of Christ which they are become."—*Laws of Church*, Book III., Ch. ii., p. 30.

And again,—

"And upon these premises I conclude, that as it is by no means to be denied that the elements are really changed, translated, turned and converted, into the Body and Blood of Christ (so that whoso receiveth them with a living faith is spiritually nourished by the same, he that with a dead faith is guilty of crucifying Christ), yet is not this change destructive to the bodily substance of the elements, but cumulative of them with the spiritual grace of Christ's Body and Blood, so that the Body and Blood of Christ in the Sacrament turns to the nourishment of the body, whether the body and blood in the truth turn to the nourishment or the damnation of the soul."—*Laws of Church*, Ch. iv. pp. 33, 34.

From Bramhall, who died Archbishop of Armagh in 1663, a prelate of considerable erudition, I cite these passages:—

"Having viewed all your strength with a single eye, I find not one of your arguments that comes home to Transubstantiation, but only to a true real presence, which no genuine son of the Church of England did ever deny, no, nor your adversary himself. Christ said, 'This is My Body;' what He said we do stedfastly believe. He said not,

after this or that manner, *neque con, neque sub, neque trans*. And therefore we place it among the opinions of the schools, not among the articles of our Faith. The Holy Eucharist, which is the Sacrament of peace and unity, ought not to be made the matter of strife and contention."—*Works*, fol. ed. p. 15.

And again,—

"Abate us transubstantiation, and those things which are consequent of their determination of the manner of presence, and we have no difference with them in this particular. They who are ordained priests ought to have power to consecrate the Sacrament of the Body and Blood of Christ, that is, to make them present."—*Works*, p. 485.

Sparrow, Bishop of Exeter and of Norwich, died in 1685. He was also one of the Commissioners for revising the Prayer Book. In his "*Rationale*" of that book he has these words:—

"Next is the Consecration. So you shall find in Chrysostom and Cyril last cited. Which consecration consists chiefly in rehearsing the words of our Saviour's institution, This is My Body, and This is My Blood, when the bread and wine is present upon the Communion Table. 'The Holy Sacrament of the Lord's Supper,' says S. Chrysostom, 'which the priest now makes, is the same that Christ gave to His Apostles, &c.' Again, 'Christ is present at the Sacrament now, that first instituted it. He consecrates this also: it is not man that makes the Body and Blood of Christ by consecrating the holy elements, but Christ that was crucified for us. The words are pronounced by the mouth of the priest, but the elements are consecrated by the power and grace of God.' 'This is,' saith He, 'My Body;' by this word the bread and wine are consecrated.

"When the priest hath said at the delivery of the Sacrament, The Body of our Lord Jesus Christ which was given for thee, preserve thy body and soul unto everlasting life, the communicant is to answer Amen; by this Amen, professing his faith of the presence of Christ's Body and Blood in that Sacrament."—*Rationale upon the Book of Common Prayer*, pp. 211, 216, 220; ed. Oxford, 1840.

Tillotson, who died Archbishop of Canterbury, in 1694, and was of a different school of divinity from the last author, nevertheless says:—

"I deny not but that the Fathers do, and that with great reason, very much magnify the wonderful mystery and efficacy of the Sacrament, and frequently speak of a great supernatural change made by the Divine benediction, which we also readily acknowledge."—*Discourse on Transubstantiation*.

Yardley, fellow of St. John's College, Cambridge, who died Archdeacon of Cardigan, in 1770, an authority cited by Bishop Mant, says:—

"After the consecration of the elements immediately follow the reception and distribution of them, which continue still in their natural substance of bread and wine, though they are changed in their value and efficacy into the sacramental Body and Blood of Christ."—*Cited in Mant's Book of Common Prayer*.

Beveridge, who died Bishop of St. Asaph, in 1708, and wrote a well-known "Exposition of the Thirty-nine Articles," says:—

"Hence also it is, that our Church requires us to receive the holy Sacrament kneeling, not out of any respect to the creatures of bread and wine, but to put us in mind that Almighty God, our Creator and Redeemer, the only object of all religious worship, is there specially present, offering His own Body and Blood to us, that so we may act our faith in Him, and express our sense of His goodness to us, and our unworthiness of it, in the most humble posture that we can. And, indeed, could the Church be sure that all her members would receive as they ought with faith, she need not to command them to receive it kneeling, for they could not do it any other way. For how can I pray in faith to Almighty God, to preserve both my body and soul to everlasting life, and not make my body as well as soul bow down before Him? How can I by faith behold my Saviour coming to me, and offering me His own Body and Blood, and not fall down and worship Him? How can I by faith lay hold upon the pardon of my sins, as there sealed and delivered to me, and receive it any otherwise than on my knees? I dare not, I cannot do it; and they who can, have too much cause to suspect that they do not discern the Lord's Body, and therefore cannot receive it worthily. Be sure, our receiving the blessed Body and Blood of Christ, as the Catholic Church always did, in an humble and *adoring* posture, is both an argument and excitement of our faith in Him. By it we demonstrate that we discern the Lord's Body, and believe Him to be present with us in a particular sacramental sense, and by it we excite and stir up both ourselves and others to act our faith more steadfastly upon Him, in that by our *adoring* Him, we actually acknowledge Him to be God as well as man; and therefore on whom we have all the reason in the world to believe and trust for our salvation."—*Bishop Beveridge, on "Frequent Communion,"* p. 208.

I cannot more fitly conclude this catalogue than by a reference to the high authority of the present Bishop of Salisbury, Dr. Moberly, who, in one of his Bampton Lectures, observes upon the Holy Eucharist as follows:—

"In order to constitute its complete character according to the divine pattern of its institution, it absolutely requires two things. First, there must be the consecration of the elements by the priest, the organ of the priestly Church, empowered by sacred ordinance to do that solemn and indispensable portion of the joint act which none else may presume to exercise or intrude upon; for it is no

common nor ordinary work which he has to do. It is no light thing that by the acts that he organically does, and the words which he organically utters, the spiritual presence of the Lord is so brought down upon the elements of bread and wine, as that to the faithful they become verily and indeed, however invisibly and mysteriously, the Body and Blood of Christ."—*Moberly's Bampton Lectures*, pp. 176, 177.

Again:—

"There has never been a question of the absolute confinement of the power of consecrating the bread and wine to their mysterious efficacy of becoming to the faithful, and to the Church of the faithful, the Body and Blood of the Lord, to the ordained clergy."—*Moberly's Bampton Lectures*, p. 177.

Again:—

"No doubt some of the ancients, as, for example, St. Chrysostom, in the treatise on the priesthood, use very strong and remarkable language on this part of the subject. I venture to think that as we should not have scrupled to use similar language if we had lived before the Roman theory of Transubstantiation had been elaborated into all its train of evil and superstitious consequences, so would he in all probability have guarded his expressions had he been writing in later days, when that philosophical theory had been invented and made to take the place of the simple doctrine of the real, and, as in our modern mode of speech we call it, the objective presence of the Body and Blood of Christ in the sacred elements.

"Under the outward and visible form of bread and wine we believe that the Body and Blood of Our Lord and Saviour Jesus Christ are given, taken, and received; and we believe that that divine food, according to the sacred teaching of our own Liturgy in this respect, imparts to every one of those who receive it with true penitent heart and lively faith, these nine inestimable blessings."—*Moberly's Bampton Lectures*, pp. 173-4.

Again:—

"That Divine nourishment is the Body and Blood of Christ. It is hardly possible, brethren, in these days of division and disputation on all the most sacred articles of the faith to pass by, quite without notice, the extreme diversity of opinion of churches and doctors on this most sacred, and in its general terms unquestioned, doctrine, but it suits little with my purpose to dwell upon such diversities at any length."

And then this learned prelate adds the following words which deserve the most careful attention, both from the great weight due to the authority which uttered them, and from their bearing upon the present case:—

"I will therefore only say that the ancient doctrine of the Church, and, as I read it, the unquestionable doctrine of the Church of England, is that the spiritual presence of the body and blood of our Lord in the Holy Communion is objective and real.

NEW SERIES, 39.—ECCLES.

I do not see how we can consent, as with Hooker and Waterland, to limit authoritatively that presence to the heart of the receiver; for the words of the institution (and these are cases in which we are rigidly and absolutely bound to the exact words of the revelation), the words, I say, of the Lord in the institution, seem to forbid such a gloss."—*Moberly's Bampton Lectures*, p. 171.

*Real Presence.*—The use of the terms *Objective* and *Subjective*.

During the course of the argument the use of the phrase *objective* presence was demurred to by counsel for the promoter.

It was said, I believe quite truly, that the phrase had been recently introduced into treatises of English theology; a remark which might also be made with respect to the introduction of it into systems of philosophy. I mean to speak with proper diffidence on this subject, but the fact seems to be by no means conclusive against the use of it in either science.

Philosophy and theology have derived these terms, *objective* and *subjective*, from the schoolmen, and in both sciences they express a distinction which, perhaps, no other terms can adequately convey.

*Subjective*, in both sciences, denotes, I believe, that which belongs to the mind or soul of man, the thinking conscious subject.

*Objective* denotes that which belongs to what is without or external to the mind or soul of man, the object known, perceived, or believed to exist. It signifies what is real in opposition to what is ideal; what exists in nature in contrast to what exists in thought; what has a substantive, independent existence in fact, not a relative dependent existence in the mind or soul of the individual.—*Sir W. Hamilton's Lectures*, Vol. II., pp. 159, 160.

Thus the phrase *subjective* presence would be used, I presume, to mean that the presence of Christ is in the act of reception by the communicant of the consecrated elements themselves.

The phrase *objective* presence would be used, I presume, to mean that the presence of Christ is mysteriously, but really, in the consecrated elements apart from the act of reception by the communicant.

The use of these phrases cannot be imposed as a necessary condition of resolving the question as to the mode of the presence. It seems to me that the language of the present Bishop of Carlisle on this point deserves attention.

"We see it and hear it, for instance, continually and very warmly discussed, whether the presence of Christ in the sacrament be an *objective* or a *subjective* presence. It is taken for granted that it must be either the one or the other; it must

either be *objective*, that is, independent of the mind contemplating it, or else it must be *subjective*, that is, dependent upon the contemplating mind. Now it may seem at first sight that this view of the question is exhaustive; and yet whichever horn of the dilemma you take you arrive at consequences not easily admissible. Is it conceivable that the presence of Christ should be altogether independent of the worshipper? If so, do you not degrade that presence, and run the risk of confounding the sacrament with a charm, something that can produce results without the accompanying energy of a true and living faith on the part of those who receive it? On the other hand, is it conceivable that the presence of Christ should be altogether dependent upon the spirit of the worshipper, so that there should be no absolute and independent truth and meaning in the words of our Lord when he said, 'This is My Body,' and 'This is My Blood'? I cannot accept either horn of the dilemma. And if it be asked, What then will you do? I reply by denying that anyone has a right to submit the words of Christ to any dilemma of the kind. What right have we to say that His presence must be either *objective* or *subjective*? Why may it not in some sense be both? Or how do we know that that mysterious presence of which we speak is capable of being described under such a formula at all?—*Dean Goodwin's Sermons*, 1868, p. 112.

However recently the terms *objective* and *subjective* may have been introduced into our theology, and whether the introduction of them has or has not been necessitated or justified by increased laxity and confusion of speech upon the subject of the Holy Eucharist, they are certainly now supported by very high authority, even if we confine our consideration to the writers of our own country. They have been adopted, as will be seen in the citations which I have made, by some of the most erudite and esteemed of our own divines. And in my opinion it was legally competent to Mr. Bennett to make use of them.

*Real Presence.—Use of the phrase "Under the forms of Bread and Wine."*

Great objection was taken by the counsel for the promoter to the phrase "under the form of bread and wine," which it was contended introduced teaching at variance with the formularies of our Church. This form of expression has been used in our formularies as applicable to the substances of bread and wine remaining unchanged. They were so used in the Articles of 1536, and in the "Institution of a Christian Man" in 1537. In the Six Articles a direct statement of transubstantiation took their place. They do not appear in the "Necessary Erudition" of 1543. After a lapse of four years they reappeared under the auspices of Cranmer and

other bishops at the end of the first book of the Homilies, where it is said, "Hereafter shall follow sermons of the nativity, passion, resurrection, and ascension of our Saviour Christ, of the due receiving of His blessed body and blood under the form of bread and wine." And it is not unimportant to observe, that, early in the reign of Elizabeth, the bishops advert to this statement, for in their title to the second book of the Homilies they speak "of such matters as were promised and entitled in the former book of Homilies." And in Queen Elizabeth's Primer of 1559, we find the prayer which begins "Our Saviour and Redeemer, Jesu Christ, which in Thy last Supper with Thine Apostles didst deliver Thy blessed body and blood under the form of bread and wine." The first book of Homilies has undergone two revisions, and the statement "under the form of bread and wine" remains unchanged up to the present time.

Ratramn, it will be seen, adopted pretty much the same form of expression.

"At quia continentur et corpus et sanguinem Christi esse, nec hoc esse potuisse, nisi facta in melius commutatione; neque ista commutatio corporaliter, sed spiritualiter facta sit necesse est, ut jam figuratè facta esse dicatur quoniam sub velamento corporis panis corporeique vini spirituale corpus Christi spiritualisque sanguis existit." (5)

It is remarkable that the followers of Wickliffe and the Lollards, who were burnt in the reigns of Henry IV. and V., under the authority of the inhuman statute then enacted, appear to have maintained "the sacrament of Christ's flesh and his blood in form of bread and wine," and to have been burnt for refusing to acknowledge the corporal presence, and to declare that after the words of consecration the material bread and wine no longer existed.—*Southey, History of the Church*, Chapter XI.—*Hume*, Vol. III., c. 19.

(5) Ratramni de Corp. et Sanguine Domini, p. 15.

The following is Bishop Burnet's account of Ratramn. "Ratramnus was commanded by Charles the Bald, then emperor, to write upon that subject, which he, in the beginning of his book, promises to do, not trusting to his own sense, but following the steps of the holy fathers. He tells us that there were different opinions about it; some believing that the body of Christ was there without a figure; others saying that it was there in a figure or mystery; upon which he apprehended that a great schism must follow. His book is very short, and very plain; he asserts our doctrine as expressly as we ourselves can do, he delivers it in the same words, and proves it by many of the same arguments and authorities that we bring."—*Burnet, Exposition of the 39 Articles*, Art. XXVIII. p. 337.



To Sir John Oldcastle (Lord Cobham) in 1414, the inquisitors put the Roman proposition as to the presence, and their question on it as follows :—

"The fayth and the determination of holy church touching the blissful sacrament of the auter, is this; that after the sacramentall wordes ben sayde by a preest in hys masse, the material bred, that was bifore, is turned into Christis verray body; and the material wyn, that was before, is turned into Chrystes verrey blode, and so ther leweth in the auter no material brede, no material wyn, the wych wer ther before the seying of the sacramental wordes; howe lyve ye this article?" —*Wilkin's Concilia Mag. Brit.* Vol. III., pp. 355-6; *Collier, Eccl. Hist.*, Vol. III., 294.

To which Oldcastle answered, "in sacramento altaris est verum corpus et verus panis, viz, quem videmus, et corpus Christi *sub eodem velatum* quod non videmus." He was burnt for not believing in transubstantiation.

The first of the Six Articles, framed by Henry VIII. when he went back to Transubstantiation, is in these words :—"That in the Eucharist is really present the *natural* body of Christ *under the forms* and *without the substance* of bread and wine" (See *ante*, p. 3); which seems to shew clearly that the phrase "under the forms of bread and wine" does not *per se* express the doctrine of Transubstantiation.

Ridley would certainly have adopted the language of Ratramn, and have induced Cranmer to do so. Cranmer, moreover, approved of the Augsburg confession, in which the Article is as follows :—

#### "VII. De Eucharistia.

"De Eucharistia constanter credimus et docemus, quod in sacramento corporis et sanguinis Domini, vere, substantialiter, et realiter adsint corpus et sanguis Christi *sub speciebus panis et vini*. Et quod sub eisdem speciebus verè et realiter exhibentur et distribuuntur illis qui sacramentum accipiunt, *sive bonis sive malis*."—Hardwick on the Articles, p. 255.

I may observe in passing, that when the Jerusalem Bishopric Act was passed, the instructions from Lambeth and London to the English bishop were to ordain Prussian subjects who had subscribed the Confession of Augsburg as well as the Thirty-nine Articles of the English Church. The directions were as follows :—

"Congregations consisting of Protestants of the German tongue, residing within the limits of the bishop's jurisdiction, and willing to submit to it, will be under the care of German clergymen ordained by him for that purpose, who will officiate in the German language, according to the forms of their national liturgy compiled from the ancient liturgies, agreeing in all points of doctrine with

the liturgy of the English Church, and sanctioned by the bishop, with consent of the Metropolitan, for the special use of those congregations; such liturgy to be used in the German language only. Germans intended for the charge of such congregations are to be ordained according to the ritual of the English Church, and to sign the Articles of that Church; and, in order that they may not be disqualified by the laws of Germany from officiating to German congregations, they are, before ordination, to exhibit to the bishop a certificate of their having subscribed, before some competent authority, the Confession of Augsburg." —*From A Statement of Proceedings relating to the Establishment of a Bishopric of the United Church of England and Ireland in Jerusalem*; published by authority; London, December 9th, 1841.

By the joint operation of 3 & 4 Vict. c. 33, and 5 Vict. c. 6. s. 4, persons so ordained may officiate with the consent of the ordinary in England.

It may be well to compare this doctrine, that the body and blood of Christ are spiritually present under the form of bread and wine, with the doctrine of transubstantiation as laid down by the Council of Trent. The difference between the two doctrines is at once apparent.

#### "C. IV. De Transubstantiatione.

"Quoniam autem Christus redemptor noster corpus suum id, quod sub specie panis offerebat, vere esse dixit, ideo persuasum semper in ecclesia Dei fuit, idque nunc denuo sancta hæc synodus declarat, per consecrationem panis et vini conversionem fieri totius substantiæ panis in substantiam corporis Christi Domini nostri, et totius substantiæ vini in substantiam sanguinis ejus. Quæ conversio convenienter et proprie a sancta catholica ecclesia *transubstantiatio* est appellata."

"Can. II. Si quis dixerit, in sacrosancto eucharistiæ sacramento *remanere substantiam* panis et vini una cum corpore et sanguine Domini nostri Jesu Christi, negaveritque mirabilem illam et *singularem conversionem totius substantiæ panis* in corpus, et *totius substantiæ vini* in sanguinem, *manentibus dumtaxat speciebus* panis et vini, quam quidem conversionem catholica ecclesia aptissime transubstantiationem appellat, anathema sit."—*Canones, &c. Concilii Tridentini*, p. 60.

Nicholson, Bishop of Gloucester, one of the committee selected by the Convocation in 1661 to undertake, in compliance with the king's order, the revision of the Prayer Book, speaking of the Holy Eucharist, says, "Christ is there under the forms of bread and wine; not changed in substance but in use" (*Exposition of Catechism*, 178, cited in Keble on *Euch. Adoration*, p. 142); and in that well-known book of devotion, *Sherlock's Practical Christian*, we read—

"Grant, holy Jesus, that as I have now re-

ceived in faith Thy precious body and blood, *veil'd under the species of bread and wine*, I may hereafter behold Thy Blessed Face reveiled in heaven."—*Sherlock's Practical Christian*, part ii. chap. 10, p. 252, ed. 1841.

"He discerns not this body of our Lord who sees not with the eye of faith Christ really present *under the species of bread and wine*, though he conceive not the manner thereof . . . . not curiously questioning, much less pragmatically defining, the way and manner of His presence, as being deeply mysterious and inconceivable. These old verses, expressing the faith of the wisest of our first Reformers, may satisfy every modest, humble, soberminded, good Christian, in this great mystery of godliness:—

"It was the Lord that spake it,  
He took the bread and brake it,  
And what His word did make it,  
So I believe and take it."

\* \* \* \* \*

"And he that receives Christ's holy body and blood into his soul, not first emptied of all his sins by holy faith, and all the sacred offices of true repentance, doth with Judas betray his Master into the hand of His enemies, even those very enemies which crucified Him; for those were our sins. And therefore it is said of such unworthy receivers that they are guilty of the body and blood of Christ."—*Sherlock's Practical Christian*, part ii. chap. 1.

"Consider," says Sutton, "the divine wisdom of the Son of God, who, respecting our weakness, hath conveyed unto us His body and blood after a divine and spiritual manner, *under the form of bread and wine*."—*Godly Meditations on the most Holy Sacrament of the Lord's Supper*, p. 26.

*Real Presence.*—*Effect of the 29th Article on this doctrine.*

An argument was addressed to me, founded on the 29th Article of Religion, which I must notice. The 29th Article is as follows:—

XXIX. *Of the wicked which eat not the body of Christ in the use of the Lord's Supper.*

"The wicked, and such as be void of a lively faith, although they do carnally and visibly press with their teeth, as St. Augustine saith, the Sacrament of the body and blood of Christ, yet in no wise are they partakers of Christ, but rather to their condemnation do eat and drink the sign or Sacrament of so great a thing."

It was not and could not be contended that Mr. Bennett had directly contravened this Article, because the charge against him, founded upon it, had been struck out by the Court; but it was argued, quite fairly, that this 29th Article furnished a reason why the objective presence could not be the doctrine of the Church of England, otherwise it was said the wicked would be partakers of Christ in the Eucharist, which this Article declares they are not.

It seems to me, however, that it can be reasonably and fairly argued that the object of the Article, which must be construed as a whole, and not, as has been strangely supposed, by the title alone, was to assert that the wicked who received the holy elements received them to their condemnation; that is, that they did not become *spiritually* partakers of Christ, though they *sacramentally* received His body and blood. And the phrase, "Eat Christ's body," I may observe, in the title, is a phrase of theology capable of various interpretations. It is taken from the 6th chapter of St. John, and may be, as it has been, by high authority (*Pusey on the Real Presence*, p. 255), interpreted to mean so to eat the body of Christ as to dwell in Christ, or, in other words, to be "partakers of Christ"; they do not eat Christ's body to any purpose or effect for which it was offered to them; they eat it to their damnation; they eat a judgment to themselves, but still in one sense they eat it, or rather, as it is expressed in the old hymn—

"Sumunt boni, sumunt mali,  
Sorte tamen inæquali,  
Vitæ vel interitûs;  
Mors est malis, vita bonis;  
Vide, paris sumptionis  
Quam dispar sit exitus!"

Bishop Ridley, in the course of his disputation at Oxford, said—

"Evil men do eat the very true and natural body of Christ *sacramentally*, and no farther, as St. Augustine saith; but good men do eat the very true body both *sacramentally* and *spiritually*, by grace."—*Works*, p. 246.

And again, we have this passage—

*Watson.*—"Good sir, I have determined to have respect to the time, and to abstain from all those things which may hinder the entrance of our disputation; and therefore, first I ask this question—When Christ said in John vi., 'He that eateth My flesh, &c., doth He signify in those words the eating of His true and natural flesh, or else of the bread and symbol?'"

*Ridley.*—"I understand that place of the very flesh of Christ to be eaten, but *spiritually*. And further I say, that the Sacrament also pertaineth unto the spiritual manducation; for *without the spirit to eat the Sacrament is to eat it unprofitably; for whose eateth not spiritually, he eateth his own condemnation*."—*Works*, p. 238.

St. Augustine, upon whose authority the 29th Article professes to be founded, frequently states that the wicked do, in the sense I have mentioned, receive the body of Christ. He says:—

"Sicut enim Judas cum buccellam tradidit Domino non malum accipiendo sed malè accipiendo

locum in se Diabolo præbuit: Sic indignè quisque sumens Dominicum Sacramentum non efficit, ut quia ipse malus est malum sit, aut quia non ad salutem acceperit nihil acceperit. *Corpus enim Domini et sanguis Domini nihilominus erat illis quibus dicebat Apostolus: Qui manducat indignè, iudicium sibi manducat et bibit.*—*De Bapt. c. Don., lib. 5.*

“De uno pane et Petrus et Judas accepit: Petrus ad vitam, Judas ad mortem; *cibus bonus bonos vivificat, malos mortificat.*”—*In Joh., Tr., 60.*

“Corpus Christi cum signo Diaboli accipere non timent.”—*Ep. ad Poss.*

“*Judas Christi corpus accepit.*”—*In Joh., Tr., 62.*

Other instances might be mentioned.

Dr. Jackson, to whom I have already adverted, adds the weight of his great authority to this construction of the Article:—

“The questions then to be discussed are two:—

“First, what it is to eat Christ's flesh and drink His blood?

“Secondly, what it is for Christ to dwell or abide in us, and us to dwell or abide in Him?

“All agree that there is a twofold eating of Christ's body and a twofold drinking of His blood; one merely sacramental, and another spiritual; which agreement notwithstanding, there ariseth a third question, namely, what manner of eating Christ's flesh and drinking His blood is in this place either only or principally meant?

“For the resolution of this question, we are briefly to explicate each member of this division; namely, 1, what it is to eat Christ's body and drink His blood sacramentally only; 2, what it is to eat His body and drink His blood spiritually.

“First then, all that are partakers of this Sacrament eat Christ's body and drink His blood sacramentally; that is, they eat that bread which sacramentally is His body, and drink that cup which sacramentally is His blood, whether they eat or drink faithfully or unfaithfully. For all the Israelites (1 Cor. x.) drank of the same spiritual Rock, which was Christ sacramentally; all of them were partakers of His presence, when Moses smote the rock; yet with many of them God was not well pleased, because they did not faithfully either drink or participate of His presence. And more displeased He is with such as eat Christ's body and drink His blood unworthily, though they eat and drink them sacramentally; for eating and drinking so only, that is, without faith or due respect, they eat and drink to their own condemnation, because they do not discern or rightly esteem Christ's body or presence in the Holy Sacrament.

“May we say then that Christ is really present in the Sacrament, as well to the unworthy as to the faithful receivers? Yes, this we must grant; yet must we add withal, that He is really present with them in a quite contrary manner; really present He is, because virtually present to both; because the operation or efficacy of His body and blood is not metaphorical, but real in both. Thus the bodily sun, though locally distant for its substance, is really present by its heat and light, as well to

some eyes as to clear sights, but really present to both by a contrary real operation; and by the like contrary operation it is really present to clay and to wax: it really hardeneth the one and really softeneth the other. So doth Christ's body and blood by its invisible but real influence mollify the hearts of such as come to the Sacrament with due preparation, but harden such as unworthily receive the consecrated elements. If he that will hear the word must take heed how he hears, much more must he which means to receive the Sacrament of Christ's body and blood be careful how he receives. He that will present himself at this great marriage feast of the Lamb without a wedding garment, had better be absent. It was always safer not to approach the presence of God, manifested or exhibited in extraordinary manner (as in His sanctuary or in the ark), than to make appearance before it in an unhallowed manner, or without due preparation. Now, when we say that Christ is really present in the Sacrament, our meaning is, that as God He is present in an extraordinary manner; after such a manner as He was present (before His incarnation) in His sanctuary, the ark of His covenant; and by the power of His Godhead, thus extraordinarily present, He diffuseth the virtue or operation of His human nature either to the vivification or hardening of their hearts who receive the sacramental pledges. So, then, a man by eating Christ's body merely sacramentally may be excluded from His gracious presence. But no man hath Christ dwelling in him by this manner of eating His flesh and drinking His blood unless withal he eat the one and drink the other spiritually. *The eating, then, of Christ's body, and drinking His blood, merely sacramentally, is not the eating and drinking here meant.*—Jackson's Works, vol. x. pp. 51–3, Oxford ed. 1844.

Archbishop Secker expresses himself in pretty much the same sense:—

“It is not,” he says, “the gross and literal, but the figurative and spiritual eating and drinking, the partaking by a lively faith of an union with Me, and being inwardly nourished by the fruits of My offering up My flesh and blood for you, that alone can be of benefit to the soul.

“And as this is plainly the sense in which He says that ‘His flesh is meat indeed, and His blood is drink indeed,’ so it is the sense in which the latter part of the third answer of our Catechism is to be understood, that ‘The body and blood of Christ are verily and indeed taken and received by the faithful in the Lord's Supper;’ words intended to show that our Church as truly believes the strong assurances of Scripture concerning this Sacrament as the Church of Rome doth; only takes more care to understand them in the right meaning, which is, that though in one sense all communicants equally partake of what Christ calls His body and blood, that is, the outward signs of them, yet, in a much more important sense, the faithful only, the pious and virtuous receiver, eats His flesh and drinks His blood; shares in the life and strength derived to men from His incarnation and death; and through faith in Him becomes, by a

vital union, one with Him—a member, as St. Paul expresses it, of *His flesh and His bones*—certainly not in a literal sense, which yet the Romanists might as well assert, as that we eat his flesh in a literal sense, but in a figurative and spiritual one. In appearance, the Sacrament of Christ's death is given to all alike, but *verily and indeed* in its beneficial effects to none but the faithful. *Even to the unworthy communicant He is present, as He is whenever we meet together in His name; but in a better and most gracious sense to the worthy soul, becoming by the inward virtue of His spirit its food and sustenance.* This real presence of Christ in the Sacrament His Church hath always believed."—Secker, *Lecture XXXVI.*, vol. xiv. p. 493, ed. 1792, Edinburgh.

South did not scruple to speak of his horror when he considered,—

"The pure and blessed body of our Saviour passing through the open sepulchre of such throats."—(i.e. of the wicked).—South's *Sermons*, vol. ii. p. 310.

Bishop Cosin says :—

"A while before the writing of this Apology, came forth the Dialectic of the famous Dr. Poinet, Bishop of Winchester, concerning the truth, nature, and substance of the body and blood of Christ in the blessed Sacrament, writ on purpose to explain and manifest the faith and doctrine of the Church of England on that point."—*History of Transubstantiation*, vol. iv. p. 159.

Bishop Poynt, who is thus referred to, says :—

"Now as to the denial that the wicked can eat the body of Christ, which would necessarily be the case if virtue and spiritual grace were united with the bread, we must make a distinction. For, if we regard the nature of the Sacrament, divine virtue cannot be absent from the sign, in so far as it is a Sacrament, and serves for this use; if we look to the morals and mind of the recipient, it is not to him life and grace, both of which it is by its own nature, because the evil of the wicked is not capable of so great goodness, nor suffers it to bear fruit in itself. Nay, rather, it is death and condemnation to them. For, as many kinds of meats are in their own nature wholesome, but, if they enter into diseased bodies increase the evil, and often accelerate death, not by their own nature but by the fault of the receiver, so it is with regard to the Sacrament, in which its own virtue is always present, until it discharges its office; although, when taken by the unworthy, he is not capable of receiving such goodness, or of deriving any profit therefrom. Cyprian confirms this: 'Sacraments, he says, cannot exist without their own virtue, nor can the Divine majesty be ever absent from the mysteries.' But although the Sacraments are permitted to be taken or touched by the unworthy, they whose want of faith or unworthiness resists so great holiness cannot be partakers of the Spirit. Therefore to some these gifts are the savour of life unto life, to others the savour of death unto death,

because it is altogether just that those who despise the grace should be deprived of so great benefit, and that purity should not make an abode for itself in those who are unworthy of such grace."

Then the author quotes St. Augustine as maintaining these views. He also says :—

"From these and many places it is evident that the Eucharist, as far as appertains to the nature of the Sacrament, is truly the body and blood of Christ, is a truly Divine and holy thing, even when taken by the unworthy, while, however, they are not partakers of its grace and holiness, but drink their own death and condemnation. Nor in them doth such goodness dwell, nor does it enter in order to dwell, but to condemn; nor does the contact of the Lord's body more profit it than that it did the Jews to have touched that holy body of His, always endowed with its own grace. Wherefore the Sacraments continue, so long as they are Sacraments, to retain their own virtue, nor can they be separated therefrom. For they always consist of their own parts—an earthly and a heavenly, a visible and an invisible, an inward and an outward, whether the good take them or the bad, whether the worthy or the unworthy. Besides, that commutation of the signs, and the transition of the elements into the inward substance, which everywhere occurs in the ancient writers, cannot exist, if we separate the virtue from the sign, and we wish the one to be taken apart from the other. But this is to be understood, so long as the sign serves its use, and is adapted to the end for which it was destined by the Word of God. . . . The dignity of the Sacraments, and the honour due to them, is not injured, but remains whole and entire, so long as we confess that the truth of the body and its nature and substance is received by the faithful, together with the symbols, as the ancient Fathers testify. . . .

"The good and the bad alike eat sacramentally with their mouths the body of Christ and drink His blood, but the good alone do this spiritually. Now to eat the body and blood of Christ sacramentally, and to drink His blood, is to receive the Sacrament of His body and blood; that is, the bread and the body of Christ, the wine and the blood of Christ. For in no other way are the bread and the wine Sacraments. And he who thinks it possible that the outward signs can be taken apart from those things signified, which are a necessary part of the Sacrament, divideth, or rather dissolveth, the Sacrament. For the outward symbols be only one part of the Sacrament."—*Dialecticon viri boni et literati, de veritate, naturâ, atque substantiâ Corporis et Sanguinis Christi in Eucharistiâ.*

"He who receiveth only the bread receiveth no Sacrament; for either the Sacrament is received whole and perfect or not at all. Augustine—'Sacraments, however, if they be the same, are everywhere whole and perfect, although their meaning be depraved, and the handling of them be various and discordant.' For it is not more contrary to reason that the flesh of Christ be eaten sacramentally, and His blood drunken by hypocrites, than that it should have been possible that

God should have been touched and kissed by the wicked, whosoever they either kissed or touched Christ, without any profit, to their own damnation. (Augustine on Baptism against the Donatists.) *Nor doth it make any difference, when the question is touching the perfectness and holiness of the Sacrament what be the belief and what the faith of the man who receiveth the Sacrament. It maketh, indeed, all the difference in respect of the way of salvation, but in respect of the question, what a Sacrament is, it maketh no difference at all. For it may happen that a man may have the Sacrament in its completeness, and a perverted faith, just as it may happen that a man may have all the words of the Creed, and yet have no right belief.*"—*Dialla-ticon viri boni et literati, de veritate, naturâ, atque substantiâ Corporis et Sanguinis Christi in Eucharistia.*

Thorndike says :—

"But if eating and drinking the body and blood of Christ in this Sacrament unworthily be the crucifying of Christ again, rendering a man 'guilty' of His body and blood, then is not His flesh and blood *spiritually* eaten and drunk till living faith make them *spiritually* present to the soul, which the consecration maketh sacramentally present to the body. And it is to be noted that no man can say that this Sacrament *represents* or *tenders* and *exhibits* unto him that receiveth the body and blood of Christ (as all must do that abhor the irreverence to so great an ordinance which the opinion that it is but a bare sign that Christ crucified necessarily engendereth), but he must believe this; unless a man will say that that which is not present may be represented, that is to say, tendered and exhibited presently down upon the place. It is not, therefore, that living faith which he that receives the Eucharist, and is present at the consecrating of it, may have and may not have that causeth the body and blood of Christ to be *sacramentally present* in the elements of it, but it is the profession of that common Christianity which makes men members of God's Church; in the unity whereof wheresoever this Sacrament is celebrated (without inquiring whether those that are assembled be of the number of those to whom the kingdom of Heaven belongs), *thou hast a legal presumption even towards God that thou receivest the flesh and blood of Christ in and with the elements of bread and wine, and shalt receive the same spiritually for the food of thy soul, supposing that thou receivest the same with living faith.* For one part of our common Christianity being this, that our Lord Christ instituted this Sacrament with a promise to make by His Spirit the elements of bread and wine *sacramentally* His body and blood, so that His Spirit that made them so (*dwelling in them as in His natural body*), should feed them with Christ's body and blood that receive the Sacrament of them with living faith; this institution being executed, that is, the Eucharist being consecrated according to it, so sure as Christianity is true, so sure the effect follows."—*Laws of Church*, chap. iii. pp. 17, 18.

Thorndike is very explicit in distinguishing between the merely *sacramental* reception by the wicked and the *spiritual* reception by the good.

"Here, indeed, it will be requisite to take notice of that which may be objected for an inconvenience that God should grant the operation of His Spirit to make the elements sacramentally the *body and blood of Christ* upon the dead faith of them who receive it to their condemnation in the sacrament, and therefore cannot be said to *eat* the body and blood of Christ (which is the only act of living faith), without that abatement which the premises have established, to wit, in the sacrament. But all this, if the effect of my saying be thoroughly considered, will appear to be no inconvenience. For that the *body and blood of Christ* should be *sacramentally* present in and under the elements (to be *spiritually* received of all that meet it with a living faith, to condemn those for crucifying Christ again *that receive it with a dead faith*;) can it seem any way inconsequent to the consecration thereof by virtue of the common faith of Christians, professing that which is requisite to make true Christians, whether by a living or a dead faith; rather must we be to seek for a reason why 'he that eateth this bread and drinketh this cup unworthily' should be 'guilty of the body and blood of Christ' as 'not discerning it;' unless we suppose the same sacramentally present by virtue of that true Christianity which the Church professing and celebrating the sacrament, tendereth it for a spiritual nourishment to a living faith,—for matter of damnation to a dead faith. For if the profession of true Christianity be, as of necessity it must be, matter of condemnation to him that professeth it not truly (that is to say, who professing it doth not perform it,) shall not his assisting the celebration and consecration of the Eucharist produce the effect of rendering him condemned by himself (*eating the body and blood of Christ* in the sacrament, out of a profession of Christianity which spiritually he despiseth,) for not fulfilling what he professeth; or that living faith which concurrereth to the same as a good Christian should do, be left destitute of that grace which the tender of the sacrament promiseth, because the faith of those who join in the same action is undiscernible? Certainly if the sacramental presence of Christ's body and blood, tendering the same spiritually, be a blessing or a curse, according to the faith which it meets with; it can by no means seem unreasonable that it should be attributed to that profession of Christianity which makes it respectively a blessing or a curse, according to the faith of them for whom it is intended."—*Laws of Church*, chap. iii. p. 18.

Dr. Hey uses remarkable language as to this 29th Article.

"Our *application*" (he says) "may be confined to *mutual concessions*. And for these I think there is greater room in this Article than in any other. The dispute between the Romanists and the reformed is merely *verbal*. I mean about the present Article as separated from all others. They say,

the bread after consecration is the body of Christ, even in *substance*; it follows, supposing this true, that *whoever* eats that substance, eats the body of Christ; that is, it is not *desecrated* by one mouth more than by another. We say that the bread continues bread after consecration, and therefore that every receiver eats bread; but that he who does what the Scripture requires may be said, in the prophetic, strong, figurative language of Scripture, to *eat the body* of Christ; as he eats what is appointed to represent that body, and what the Scripture calls briefly that body itself. The Romanists, therefore, and we, use a phrase, eating the body of Christ, in two different senses; and we also use this proposition, '*The wicked eat Christ's body*,' in two different senses, consequently to dispute about its truth is idle, and childish. They too use it as a corollary from a proposition which we think false, though we own the corollary to be rightly deduced. Now it must always be trifling to dispute about such a corollary, as if it were an independent proposition. We both require *preparation* for the sacrament, indeed Romanists more than we; we both say, that unworthy receivers may draw *punishment* upon themselves; we both quote the passage of *Augustin* which is in our Article. In short, we both mean, that the consecrated bread is not desecrated by the unworthiness of the receiver, and that worthiness is required in order to obtain benefit."—*Hey's Lectures in Divinity*, vol. iv. p. 368.

In truth the construction placed by all these authorities on the 29th Article brings it into harmony with the words of the 25th Article. "And in such only as worthily receive the same they have a wholesome effect or operation: but they that receive them unworthily, purchase to themselves damnation, as St. Paul saith."

I must also observe that the words "the faithful" or "fideles" have been often interpreted to mean the baptised members of the visible Church. The parables of the tares and the wheat growing together, the good and the bad fish in the same net, being cited to support this position. Thorndike in the passage just cited speaks "of that common profession of Christianity which makes men members of Christ's Church; in the unity whereof wheresoever this sacrament is celebrated, without inquiring whether those that be assembled be of the number of those to whom the kingdom of heaven belongs, etc."

And Barrow in those great sermons on *The Doctrine of Universal Redemption Asserted and Explained*, which have been always received by the Church as the soundest and most eloquent exposition of her doctrine, observes:—

"But our Lord is the Saviour of those persons; and therefore He is the Saviour of all men. This assumption we assayed to shew in the last argu-

ment; and many express testimonies of Scripture before mentioned establish it; the common style of Scripture doth imply it, when in the apostolical writings to all the visibly faithful indifferently the relation to Christ as their Saviour is assigned, an interest in all saving performances is supposed, the titles of *σωζόμενοι* and *σώσωμενοι* (with others equivalent, of justified, sanctified, regenerated, quickened, etc.,) are attributed. And in one text (*ὅτι ἡλικίαν ἐπὶ Θεῷ ζῶντι, ὅς ἐστι σωτὴρ πάντων ἀνθρώπων, μάλιστα πιστῶν*. 1 Timothy, iv. 10) GOD is said to be the Saviour chiefly *τῶν πιστῶν*, of the faithful; which word in its common acceptation denotes all visible members of the Christian communion."—*Barrow's Works*, vol. iv., pp. 25, 26.

In accordance with this teaching Bishop Beveridge interprets our 19th Article:—

"Of the Church.

"The visible Church of Christ is a congregation of *faithful* men in the which the pure word of God is preached, etc."

The Bishop says:—

"Though the Church of Christ be one and the same Church, both in heaven and earth, yet it there differs much from itself as here. There it is triumphant, here militant; here it is militant, not triumphant. There it consisteth of good only and not of bad; here of bad as well as good."—*Bishop Beveridge on the Articles*.

Our Burial Service is constructed on the presumption that all who are not unbaptised or excommunicate or have not laid violent hands upon themselves, are to be considered as belonging to the Church of Christ.

Before, however, I leave the question as to whether the manuduction by the wicked of the elements without eating Christ, be or be not an argument for the absence of the Presence from the consecrated elements, I must observe, that an opinion has been maintained by great divines, such as Cyprian and Bishop Ken, that the Presence is miraculously withdrawn from the elements in cases where the wicked or a beast have devoured them.

These are the lines of Bishop Ken:

"How Godhead to our human flesh was join'd,  
Transcends the reach of an angelick mind.  
How God and man with bread and wine unite,  
Is too sublime for bounded human sight;  
To boundless Godhead both united are,  
God tabernacles here, and temples there.  
There undivided God and man exist,  
The flesh assum'd is ne'er to be dismiss'd;  
'Tis transient here, and when a Judas eats  
The sacred bread, Christ's Shechinah retreats.  
The day and night each other still expel,  
Pure God in souls impure can never dwell."  
—*On the Eucharist*, Poetical Works, vol. i. pp. 123-128, London, 1721.

According to this opinion the real presence

in the Holy Eucharist may be maintained by those who deny the reception of Christ "in any sense" by the wicked.

I am of opinion that the doctrine of the real spiritual or of the objective real presence maintained by the defendant is not by necessary implication at variance with this 29th Article of Religion, and, as I have already said, Mr. Bennett is not charged with directly contravening any doctrine respecting the reception of the Eucharist by the wicked.

*Real Presence.—Judgment at Bath, 1856.*

The judgment given at Bath by Archbishop Sumner and his assessors, against the Archdeacon of Taunton, in 1856, has been cited as having decided the question of the mode of presence adversely to the statements of Mr. Bennett. But I decline absolutely to admit that this decision has any legal validity, or is in any way binding upon this Court in this case.

I do so for various reasons ; perhaps one reason is sufficient. That decision was reversed by the Court of Arches and the Privy Council. The decision was appealed from on almost every possible ground of law, civil and ecclesiastical ; that is, the nature of the case being considered upon the merits as well as the law. The appeal was heard in the first instance upon the construction of the statute 3 & 4 Vict. c. 86 ; and this appeal was successful in both Courts. And as it decided that the Archbishop had by reason of the lapse of time no jurisdiction to try the case at all, the other questions were not discussed ; but, as a reference to the pleadings shew, the decision of the Archbishop was as stoutly contested on the merits, or on the law strictly ecclesiastical, as on the statute law.

The inference, that because the appellant was successful *in limine* upon the first objection which he took, he would not have been successful on his other objections which he had not an opportunity of stating, but on which he confidently relied, would indeed be a novel doctrine of jurisprudence.

It is not necessary that I should dwell further upon the subject, or refer to what has happened since 1856 ; but I ought to add this observation, which perhaps makes all reference to this case unnecessary, namely, that the proceedings against the Archdeacon of Taunton were grounded on his alleged contravention of the law with respect to the reception of the Holy Eucharist by the wicked ; a question which I have not to decide in these proceedings against Mr. Bennett.

NEW SERIES, 39.—ECCLES.

*Real Presence.—As to the Receptionist Doctrine.*

There is a doctrine as to the mode of the presence which has obtained the name of the receptionist doctrine. It is thus expressed by Hooker : "The real presence of Christ's most blessed body and blood is not therefore to be sought for in the sacrament, but in the worthy receiver of the sacrament." To whatever cause this opinion of Hooker may be due, whether, as has been suggested, to his respect for Calvin or his sympathy with the sufferings of Reformers on the Continent (Hooker's Works, ed. Keble, 1 Vol., Pref. pp. 81–83.—Keble on *Eucharistical Adoration*, p. 124), or to the result of his own convictions on the subject, it was certainly not his intention to maintain that no other mode of the presence could be lawfully holden by clerks of our Church. For, with that wisdom which is the fruit both of deep learning and fervent charity, he says :—

"As for his dark and hidden works, they (that is, 'such as love piety,') prefer, as becometh them in such cases, simplicity of faith before that knowledge which curiously sifting what it should act on, and disputing too boldly of that which the wit of man cannot search, chilleth for the most part all warmth of zeal, and bringeth soundness of belief many times into great hazard."

*And again :—*

"The fruit of the Eucharist is the participation of the body and blood of Christ. There is no sentence of Holy Scripture which saith that we cannot by this sacrament be made partakers of His body and blood, except they be first contained in the sacrament, or the sacrament converted into them. 'This is my body,' and 'This is my blood,' being words of promise, sith we all agree that by the sacrament Christ doth really and truly in us perform His promise, why do we vainly trouble ourselves with so fierce contentions, whether by consubstantiation, or else by transubstantiation, the sacrament itself be first possessed with Christ or no? A thing which no way can either further or hinder us, however it stand, because our participation of Christ in this Sacrament dependeth on the co-operation of His omnipotent power which maketh it His body and blood to us, whether with change or without alteration of the element such as they imagine, we need not greatly to care nor inquire."—Hooker's Works, ed. Keble, Book V., Ch. lxvii. 6.

When Hooker's Puritan adversary observed that in these words he seemed to make light of the doctrine of transubstantiation, Hooker replied :—

"They (the Romanists) ought not to stand in it as in a matter of faith, nor to make so high account of it inasmuch as the Scripture doth only teach the communion of Christ in the Holy Sacra-

P

ment, and neither the one nor the other way of preparation thereunto. It sufficed to have believed this, and not by determining the manner how God bringeth it to passe, to have entangled themselves with opinions so strange, so impossible to be proved true. They should have considered in this particular sacrament that which Bellarmine acknowledgeth of sacraments in generall. It is a matter of faith to believe that sacraments are instruments whereby God worketh grace in the souls of men; but the manner how he doth it is not a matter of faith." (6)

I was referred to some portions of a charge prepared by the late Archbishop of Canterbury, but which his much lamented death prevented him, perhaps, from correcting, certainly from finishing and delivering. From them it appeared that he adopted, as many divines have done, the opinion of Hooker. For Archbishop Longley I can never cease to feel the highest esteem and the deepest regard. It would be a libel on his memory to suppose that he held this particular mode of the presence to be the only mode which the Church of England allowed her children to believe. The last time that I saw him in public, in the year 1868, he was presiding over the meeting in the theatre at Oxford, the object of which was to found a college for the maintenance of those church principles which the late Mr. Keble professed. Mr. Keble's edition of Hooker was published in 1845, and his work on the "Eucharistical Adoration" was published in 1857, in both of which he regretted that upon this point Hooker had suffered himself to be biassed by the opinions of foreign reformers, and expressed the strongest possible opinion in favour of the objective real presence in the holy elements.

Having cited all these authorities, I will now recur to the very words of the 28th Article:—

"The body of Christ is given, taken, and eaten in the supper, only after an heavenly and spiritual manner. And the mean whereby the body of

Christ is received and eaten in the Supper, is Faith."

I believe that the position of those who agree with the opinions of the defendant would take this form of argument, or something like it: They say—What is given?—The body of Christ. Who gives it?—Our Lord the Great High Priest in Heaven, by the hands of His priests, ministering, as the 26th Article says, by His "commission and authority" on earth. What is taken?—What has been before given, the body of Christ. What is eaten?—What has been before given and taken, the body of Christ.

The manner indeed of the giving, the taking, and the eating is only heavenly and spiritual, but not the less on that account is something given, taken, and eaten external to and apart from the giver, taker, and eater. The whole manner of the presence is indeed supernatural, but not the less true; spiritual, but not the less real; heavenly, but not the less actually there to cleanse the body and wash the soul of the communicant. It has happened that among the recent discoveries of ecclesiastical historical records we have a *contemporanea expositio* from the compiler of this Article, which cannot, I think, be gainsaid.

It is a letter entitled:

"Edmund Gheast, Bishop of Rochester, to Cecil."

"Greeting in ye Lord," and it goes on as follows:—

"Right Honourable,—I am verye sorye yt you are so sick. God make yow whole, as it is my desyer and prayer. I wold have seen yow er this, accordinge to my dutye and good will, but when I sent to knowe whether I might see yow, it was often answered yt yow were not to be spoken with.

"I suppose yow have hard how ye Bisshop of Glocestre" (i.e. Cheney) "found him selve greewed with ye playcnge of this adverb *only* in this article, The bodye of Christ is gyven, taken, and eaten in ye supper after an heavenly and spiritual manner *only*, by cause it did take away ye presence of Christis bodye in ye sacrament, and prively noted me to take his part therein, and yesterdaye in myn absence more playnely touched me for the same. Whereas betwene him and me I told him plainly, that this word *only* in ye aforesaid article did not exclude ye presence of Christis body for the sacrament, but only ye grossenes and sensibleness in ye receavinge thereof. Ffor I saied unto him, though he tooke Christis body in his hand, receaved it with his mouth, and that corporally, naturally, reallye, substantially, and carnally, as ye doctors doo write, yet did he not, for all that, see it, feale it, smells it, nor taste it. And therefore I told him I wold speake against him herein, and ye rather by cause ye article was of myn own pennyng. And yet I

(6) Hooker's Works, Book V., Ch. lxvii. 6.—In the same sense the Bishop of Carlisle says, "I mean that they who object to the dogma of transubstantiation, and who say that the Church of Rome had no right to impose such a dogma, do not by that objection express anything incompatible with the strongest opinions concerning our Lord's spiritual presence. What they do say is, that it is wrong to attempt to define that presence by any human formula. And that, especially with regard to the particular formula in question, experience has shown that it is capable of being interpreted in a most mischievous sense, and that it leads almost necessarily, and has in fact led to the most terrible superstition."—Dean Goodwin's *Sermons*, 1869, p. 104.



would not, for all that, deny thereby anything that I had spoken for the presence. And this was the some of our talks.

"And this that I saied is so true by all sortes of men, that even D. Hardinge writeth the same, as it appeareth most evidently by his wordes reported in ye Bisshophe of Salisburie's" (Jewel's) "booke, pagina 228, wich be thees: then we maye saye, yt in the sacrament his verye body is present, yea, really, is to saye, in deede, substantially, that is, in substance, and corporally, carnally, and naturally; by that which wordes is ment that his verye bodye, his verye flesh, and his very humane nature, is there, not after corporall, carnall, or natural wise, but invisibly, unspeakably, supernaturally, spiritually, divinely, and by waye unto him only known.

"This I thought good to write to your honour for myn owne purgation. The Almightye God in Christ restore yow to your old health, and longe keepe yow in the same, with encrease of vertue and honour.

"Yours whole to his poure,  
"EDM. ROFFENS."

*Endorsed.*—"22 December, 1566, B. of Rochester to myself."

*Superscribed.*—"To the Right Honourable and his singler good friend Sir Willm. Cecil, knight, principal Threasure to ye Queen's Matie."—Cited in Pusey, *On the Real Presence*, p. 203, also printed separately in a pamphlet.

The Homily "Concerning the Sacrament" speaks of faith being "a necessary instrument;" the Article had spoken of it as "a mean." May it not be said to have this signification: a "necessary instrument" or "a mean" of *beneficial* reception, or what the Homily calls "fruitioun," of "a ghostly substance?" Is such a construction at all events wholly inadmissible, and does it subject the holder of the theory to punishment?

The alterations effected in the Holy Communion service after the second Prayer Book of Edward VI., both in the reign of Elizabeth and Charles II., were certainly not unfavourable to those who maintained a real, or, as it is not uncommonly designated, an objective presence in the Eucharist. I do not dwell on the marginal rubrics, with respect to manual rites, or the position of the priest before the table. But I come first to the important addition made to the language which the priest is directed to use when he delivers the holy elements to the communicants. It cannot, I think, be reasonably doubted, that the substitution of the words, "Take and eat this in remembrance that Christ died for thee, and feed on Him in thy heart by faith with thanksgiving," for "The body of our Lord Jesus Christ which was given for thee, preserve thy body and soul unto everlasting life," and the substitution of "Drink this in remembrance that Christ's

blood was shed for thee, and be thankful," for "The blood of our Lord Jesus Christ which was shed for thee, preserve thy body and soul unto everlasting life," was intended to give a greater prominence to the commemorative character of the rite, and to avoid as much as possible the recognition of the presence. Queen Elizabeth insisted on the restoration of the discarded sentences, and ever since the two have been joined together in the service of the Holy Communion. The part of the Catechism introduced in the reign of James I. relative to the Holy Eucharist, according to the plain meaning of the words, favours the doctrine of the real presence in the holy elements.

In the Canons of 1603, it is said (Canon 57) that "the doctrine both of baptism and the Lord's Supper is so sufficiently set down in the Book of Common Prayer to be used at the administration of the said sacraments as nothing can be added unto it that is material and necessary."

The directions for the reverent consumption of the unconsumed elements, and for covering them with a fair linen cloth, seem to indicate increased reverence for this Sacrament. But the next matter of importance is the alteration in what is commonly, but improperly, called the Black Rubric, i.e., the declaration on kneeling at the close of the Communion Service. This declaration, which contains an apology for the kneeling posture of the communicants, found its way, under the religious influences which then prevailed, into the second Prayer Book of Edward VI. It specified that no "adoration was done or ought to be done either unto the sacramental bread and wine there bodily received or unto any *real and essential* presence there being of Christ's natural flesh and blood." Queen Elizabeth omitted this declaration altogether from her Prayer Book. There can be no doubt that she did so because it was an obstacle to the communion of the Lutherans and Roman Catholics in our Church, as well as because, rightly or wrongly, she interpreted it as adverse to the doctrine of the presence.

Upon this point we have the consentient voice of two rival historians. Collier says that Queen Elizabeth's Council, on her accession, impressed upon her, that "To prevent discontent the reformed Liturgy ought to be reviewed and made as inoffensive to all parties as may be;" Burnet, that the Queen inclined "To have the manner of Christ's presence in the Sacrament left in some general words, that those who believed the corporal presence might not be driven away from the Church by too nice an explanation

of it."—*Ecl. Hist.* vol. ii. p. 411, fol., 1714; *Hist. Reformation*, vol. ii. Book 3, p. 753.

"Corporal" is not equivalent "to real and essential" (as Mr. Keble truly remarks). It is not only associated with grosser and more carnal ideas, but in its strict philosophical meaning implies also something local, in the sense of filling a certain space, *εἰς τὴν περιγραφὴν*. The form of His glorious body "real," "substantial," "essential," imply nothing of the kind. They express our faith in the miracle, without in the least pretending to indicate the manner of it."—Keble on *Euch. Ador.* p. 137.

At the Savoy Conference in 1661, the Presbyterians desired the restoration of the declaration, and the bishops opposed it, but eventually consented to its restoration, with an alteration of the most material character, namely, the substitution of the words "*corporal* presence of Christ's *natural* flesh and blood," for the words "real and essential presence there being," &c.

#### *Alterations in the Book of Common Prayer in 1689.*

"(452.) The question.] What is the outward part or sign of the Lord's Supper?"

"(453.) The question.] What is the inward part or thing signified?"

"(454.) In the answer, 'The body and blood of Christ,' &c.] are verily and indeed taken and received by the faithful in the Lord's Supper."

"(455.) The following question.] What are the benefits whereof we are partakers thereby?"

It appears to me that the principle of legal construction applicable to this grave and deliberate alteration is clear, namely, that it was intended to exclude, in conformity with the Articles, that gross mode of presence which is called transubstantiation, but to admit the "real and essential presence," which the second Prayer Book of Edward VI. had excluded.

The alterations which a party in the Church, and the dissenters from without, after the accession of William and Mary, endeavoured in 1689 to effect in the Prayer Book point to the same result.

The Catechism appeared to express so strongly, as Bishop Hampden has observed, the Catholic doctrine as to the Sacraments, that those who did not adopt that doctrine were naturally anxious to alter the language of the Catechism. They did not succeed; but the table which follows represents the attempts that they made with respect to the Holy Eucharist.

"Altered.] What are ye outward and visible signs in the Lord's Supper?"

"Altered.] What are the things signified by ye bread and wine?"

"Struck out and altered thus.] Were offered for us upon ye cross once for all."

"Struck out, and the following additions substituted, which are so constructed as to join on with the answer to that question.]

"Question.] What is ye inward and spiritual grace?"

"Answer.] The benefits of ye sacrifice of Christ's body and blood, which are verily and indeed taken and received by ye faithful in ye Lord's Supper."—House of Commons Return, 1854.

With respect, therefore, to the charges in the criminal articles against Mr. Bennett, for describing the presence in the Holy Eucharist as "actual" and "objective," I must hold that by the use of these expressions he has not contravened the formularies of our Church, or committed any ecclesiastical offence.

#### *Doctrine of the Sacrifice.*

Under the second category of the alleged offences of the defendant, I find the following charges:—

1. "That the Holy Communion table is an altar of sacrifice, at which the ministering priests of the Church appear in a *sacerdotal position* at the celebration of the Holy Communion, and that at such celebration there is a great sacrifice or offering of Jesus Christ by the ministering priest, and

that in such sacrifice or offering the mediation of Jesus ascends from such altar to plead for the sins of men."

2. "That the Holy Communion table is an altar of a sacrificial character, at which the ministering priests of the Church discharge a *sacerdotal office* at the celebration of the Holy Communion, and that at such celebration there is a living, real, and spiritual offering of Christ by the ministering priest."

In the extract from Mr. Bennett, contained in Article 5, lettered A, he speaks of "*sacerdotal* representation at her altars;" he has before spoken of the "*episcopal* representation of the Church in the House of Lords." By the term "*sacerdotal* representation" is meant, I suppose, the officiating of the priest at the holy table; the Latin word has been used instead of the Saxon, and the language

is vague, but I find nothing necessarily at variance with the doctrine of the Church of England in the use of the expression.

In passage B the defendant speaks of "the doctrine of sacrifice" and of "the idea of a sacrifice in the blessed Eucharist." In various passages he speaks of "the Eucharistic sacrifice;" in passage E, of "the sacrificial character of the altar;" in passage G, of a "living, real, spiritual offering of Christ upon the altar;" and in passage L, of "the sacrifice offered by the priest in the Holy Eucharist."

Passage D is as follows:—

(Some Results, &c. pages 12 and 13.)

(D.) "The priest or priest and deacon formerly standing with faces opposite each other, and leaning over the altar in apparently amicable conference, now appear in their sacerdotal position, as though they were in reality occupied in the great sacrifice which it is their office to offer. Formerly, an ordinary surplice, and frequently not over clean or seemly, covered the person of the ministering priest, no difference being manifested between that and all other offering of prayer; now the ancient vestments present to crowds of worshippers the fact, that here before God's altar is something far higher, far more awful, more mysterious, than aught that man can speak of, namely, the presence of the Son of God in human flesh subsisting. And towards this are tending all the ancient rites of the Church which are now in course of restoration. The solemn music and the smoke of the incense go up before God, assuring the world that here is no appearance only of love, but a reality and a depth which human hearts cannot fathom, nor even the angels themselves. The incense is the mediation of Jesus ascending from the altar to plead for the sins of man."

As this extract appears to me to be the most explicit, if such a word be applicable to any of Mr. Bennett's statements, with respect to the offence charged, I have cited it *in extenso*. It contains, I think, these propositions; that there is a "Great Sacrifice," which it is the office of the priest to offer, to which his position at the altar has reference; that the dresses of the priests are calculated to apprise the worshippers of "the Presence of the Son of God in human flesh subsisting," as to the use of which words I have already expressed my opinion; that the rites of music and incense tend to symbolize this Presence, and to represent the reality and depth of God's love; and that the incense further or especially represents the mediation of our Lord ascending from the Altar. With respect to the propositions relating to the symbolical character of vestments and rites, no specific charge is made; and with respect to the use of incense at the time of the Holy Communion, a judgment prohibitory of it has been

delivered by me since these passages were written. But I must observe here that the sentence, "The incense is the Mediation of Jesus ascending from the Altar to plead for the sins of man" is a statement as to the symbolical use of incense, and *per se* does not contravene the doctrine of the Church. What is here predicated of incense is not necessarily connected with the doctrine of a Sacrifice, but rather, as it would seem to me, with the doctrine of the Presence; and therefore that part of the charging article, which, omitting all mention of incense, applies the words as to the Mediation of Jesus ascending from the Altar to the doctrine of a Sacrifice is founded on a construction of the words of the defendant which they do not necessarily bear. This part of the charge, therefore, is, I think, not well laid; but, if it were, it would be only an aggravation of the charge with respect to the doctrine of a Sacrifice.

It appears to me that the articles of charge are in other respects well founded.

The law on this subject is mainly contained in the 31st Article of Religion:

"The offering of Christ once made is that perfect redemption, propitiation, and satisfaction for all the sins of the whole world, both original and actual; and there is none other satisfaction for sin but that alone. Wherefore, the sacrifices of masses, in the which it was commonly said that the priest did offer Christ for the quick and the dead, to have remission of pain or guilt, were blasphemous fables and dangerous deceits."

With this should be contrasted the Canons of the Council of Trent:

Can. I. "Si quis dixerit, in missa non offerri Deo verum et proprium sacrificium, aut quod offerri non sit aliud quam nobis Christum ad manducandum dari: anathema sit.

Can. III. "Si quis dixerit missæ sacrificium tantum esse laudis et gratiarum actionis, aut nudam commemorationem sacrificii in cruce peracti, non autem propitiatorium; vel soli prodesse sumenti; neque pro vivis et defunctis pro peccatis, penis, satisfactionibus et aliis necessitatibus offerri debere: anathema sit."—*Canones, &c. Concilii Tridentini, Sess. xxii.*

I have therefore to consider, first, whether the doctrine of a Sacrifice as connected with the Eucharist be in every sense forbidden by the law of the Church; secondly, whether if the Church admit in any sense the doctrine of a Sacrifice, the passages extracted contain such a sense of that doctrine as it does not admit.

To deal with the first point first:—

I have been referred to the case of *Liddell v. Westerton* (Moore, Special Report) as a judgment of the Privy Council upon this point. It is said that this decision esta-

blished that the use of the term "Sacrifice," as applied in any way to the Eucharist, was unlawful. I am unable to take that view of the judgment, for various reasons :

First, the question as to the lawfulness of the term had never been raised in the argument, and a decision upon it was not necessary for the issue in the cause. If this point had been argued it would have been shewn, no doubt, that the authority of Cudworth principally in the absence of argument, relied upon by the Court, was opposed, not only to the great learning and authority of Mede, of Grabe, of Andrewes, of Laud, of Jackson, and the yet greater authority of one whom Waterland himself called—while dissenting from his opinion—"the incomparably learned and judicious" Bishop Bull.—*Waterland's Works*, Vol. VII., p. 343, Ed. 1823.

Secondly,—Since the observations on this point in *Westerton v. Liddell*, a flood of learning has been poured out upon the subject by the very learned treatises of Dr. Pusey, Mr. Keble, the Bampton Lectures of Bishop Moberly, the Essay of Archdeacon Churton, and other works ; and when I remember how much effect was ascribed by the Privy Council to a treatise of Dr. Story, which examined with great learning the law as to bills of exchange, and disapproved of former decisions of the Court of Queen's Bench on this subject (*Allen v. Kemble*, 6 Moore, P.C. 323), I am sure not less effect would be ascribed by that tribunal to the treatises which have since examined with at least equal learning this difficult subject, then, perhaps, as in the case of the bills of exchange, by comparison, but superficially considered.

Thirdly,—The judgment of the Privy Council did not in fact pronounce even any *obiter dictum*, as to the lawfulness of the use of this term in a particular or metaphorical sense. Even Waterland, whom Archdeacon Churton describes as not impressed with the "higher and deeper sacramental truths," observes :—

"Nevertheless, the Sacrament of the Eucharist has more particularly obtained the name of *Sacrifice*, partly on account of the *offerings* to church and poor in the *ante-oblation*, which are *peculiar* to that Sacrament, and partly on account of the commemorated *Sacrifice* in the *post-oblation*. For though baptism commemorates the *death and burial*, and indirectly the *grand sacrifice*, yet it does not so precisely, formally, and directly represent or commemorate the *Sacrifice of the Cross* as the Eucharist does."—*Waterland's Works*, Vol. VIII. p. 223, Ed. 1823.

"The value of this treatise of Waterland's will be found to consist in the clear refutation it supplies to the leading Socinian glosses on the doc-

trine of the Eucharist, reducing it, as it speaks, to a bare memorial of an absent friend. When he comes to deal with higher and deeper sacramental truths, he is no longer persuasive, often no longer trustworthy. He could vindicate the testimony of Holy Scripture concerning the Divine persons, but seems to have seen nothing mysterious in that solemn rite which was given to make men partakers of the Divine nature. It was the tendency of the cold age in which he lived, when even persons of well-regulated lives, and not altogether destitute of piety, could approve of the poor sophism of 'modest Foster,' or one of his admirers.

"Where mystery begins, religion ends. It was Waterland's great misfortune, in other respects, as well as in writing on this great subject, that he was altogether unacquainted with the writings of one who is perhaps the very first of English divines, the most profound and copious reasoner in divine things, the devout and learned Dr. Thomas Jackson."—*Supplement to Waterland's works. Fourteen Letters from Daniel Waterland to Zachary Pearce, &c., by Edward Churton, M.A., Archdeacon of Cleveland* (1868), p. xxxiii. (Preface).

There are several other passages, both in his work "A Review of the Doctrine of the Eucharist as laid down in Scripture and Antiquity," and in his charge to the Middlesex clergy, entitled "The Christian Sacrifice explained, with an Appendix," where he maintains a similar doctrine. Indeed upon this point, namely, the existence of a sacrifice in some sense, as connected with the Eucharist, it would be easy to accumulate authorities from the divines of our Church. But, as Waterland may be considered as the most prominent master of this school, I content myself with his authority.

I am led therefore to the certain conclusion, that it is lawful for a clergyman to speak in some sense of the Eucharistic sacrifice, and therefore in some sense also of the "sacrifice offered by the priest," and "the sacrificial character" of the holy table. Much of Mr. Bennett's language would fall under these categories, upon the ordinary principles of construction, by which alone in this criminal suit I must be guided. With respect to any language which may be considered to go beyond this limit, I must see whether it exceeds the liberty which, according to the judgments of the Privy Council, I must hold to be accorded to all clergymen in cases where the formularies are not express, imperative, and susceptible of but one interpretation.

*Authorities on the use of the term "Sacrifice."*

In Dr. Smith's Dictionary of the Bible will be found a learned article on "Sacrifice ;" it ends with these words :—

"Such is the brief sketch of the doctrine of sacrifice. It is seen to have been deeply rooted in

men's hearts, and to have been from the beginning accepted and sanctioned by God, and made by Him one channel of his revelations. In virtue of that sanction it has a value partly symbolical, partly actual, but in all respects derived from the true sacrifice of which it was the type. It involved the expiatory, the self-dedictory, and the *eucharistic* ideas each gradually developed and explained, but all capable of full explanation by the light reflected back from the anti-type." [Signed "A. B.," (Alfred Barry, M.A., head master of the Grammar School, Leeds; late Fellow of Trinity College, Cambridge).]

The first authority to which I will refer is that of Ratramn, quoting St. Augustine.

"Nonne semel immolatus est Christus in seipso; et tamen in sacramento non solum per omnes Paschæ solennitates; sed omni die populis immolatus? Nec utique mentitur qui interrogatus, eum responderit *immolari*. Si enim sacramenta quandam similitudinem rerum earum, quarum sacramentæ sunt, non haberunt, omnino sacramenta non essent."—*Waterland's Works*, pp. 27, 28.

Again :—

"Quod semel fecit nunc quotidie frequentat. Semel enim pro peccatis populi se obtulit: celebratur tamen hæc eadem oblatio singulis, per fideles, diebus, sed in mysterio: ut quod Dominus Jesus Christus, semel se offerens, adimplevit, hoc, in eius passionis memoriam, quotidie geratur per mysteriorum celebrationem. Nec tamen falsò dicitur quod in mysteriis illis, Dominus vel immoletur vel patiat: quoniam illius mortis atque passionis habent similitudinem, quarum existent representationes. Unde Dominicum corpus et sanguis Dominicus appellantur: quoniam eius sumunt appellationem, cujus existunt sacramentum."—*Waterland's Works*, p. 31.

The next authority is Bishop Ridley, who says :—

"For as St. Augustin saith, in his 20th book, 'Christ's flesh and blood was in the Old Testament promised by similitudes and signs of their sacrifices, and was exhibited in deed and in truth upon the cross, but the same is celebrated by a sacrament of remembrance upon the altar.'" (7)

Again :—

"And in his book, *De Fide ad Petrum*, cap. 19, he saith, that 'in these sacrifices (meaning of the old law) it is figuratively signified what was then to be given; but in this sacrifice it is evidently signified, what is already given (understanding *is the sacrifice upon the altar*) the remembrance and

(7) "Hujus sacrificii caro et sanguis ante adventum Christi per victimarum similitudinem promittebatur, in passione Christi per ipsam veritatem reddebatur, post adscensum Christi per sacramentum memoriz celebratur."—*S. Aug. cont. Faust.* lib. xx. c. 98. Op. Ed. Ben. Par. Tom. viii. col. 348.

thanksgiving for the flesh which he offered for us upon the cross,' as in the same place evidently there it may appear." (8)

Again :—

"Was Christ (saith St. Augustine) offered any more but once? And he offered himself. And yet in a Sacrament or representation, not only every solemn feast of Easter, but also every day to the people He is offered. So that he doth not lie, that saith 'He is every day offered.' For if Sacraments had not some similitude or likeness of those things whereof they be sacraments, they could in no wise be Sacraments, and for their similitudes and likeness commonly they have the names of the things whereof they be Sacraments. Therefore, as after a certain manner of speech the Sacrament of Christ's Body is Christ's body, the Sacrament of Christ's Blood is Christ's blood, so likewise the Sacrament of Faith is faith." (9)

Again :—

"These Scriptures do persuade me to believe that there is no other oblation of Christ (albeit I am not ignorant there are many sacrifices), but that which was once made upon the Cross.

"The testimonies of the antient fathers which confirm the same are out of Augustine ad. Bonifac., Epist. 23. Again, in his Book of Questions, in the 61st Question. Also in his book against Faustus the Manichee, Book xx., chap. 21. And in the same book against the said Faustus, chap. 18, thus he writeth—'Now the Christians keep a memorial of the sacrifice past, with a holy oblation and participation of the body and blood of Christ.' Fulgentius in his book *De Fide* calleth the same oblation a commemoration." (10)

(8) Works of Bishop Ridley, p. 40.—"In illis enim carnalibus victimis figuratio fuit carnis Christi, quam pro peccatis nostris ipse sine peccato fuerat oblaturus, et sanguinis quem erat effusus in remissionem peccatorum nostrorum; in isto autem sacrificio gratiarum actio atque commemoratio est carnis Christi quam pro nobis obtulit et sanguinis quem pro nobis idem deus effudit."—Fulgensius. Edit. Lug. 1633.

(9) Ridley's Works, pp. 40, 41.—"Nonne semel immolatus est Christus in seipso? et tamen in sacramento non solum per omnes Paschæ solennitates, sed omni die populis immolatur, nec utique mentitur qui interrogatus eum responderit immolari. Si enim sacramenta quandam similitudinem earum rerum quarum sacramenta sunt, non haberunt, omnino sacramenta non essent; ex hæc autem similitudine plerumque etiam ipsarum rerum nomina accipiunt. Sicut ergo, secundum quemdam modum, sacramentum corporis Christi corpus Christi est, sacramentum sanguinis Christi sanguis Christi est; ita sacramentum fidei fides est."—*S. Aug. Epist.* xxiii. Op. Ed. Ben. vol. ii. col. 267, F.

(10) Ridley's Works, p. 178.—"Unde jam Christiani peracti ejusdem sacrificii memoriam celebrant sacrosancta oblatione et participatione corporis et sanguinis Christi."—*S. Aug. Ibid.* c. 18.

Thorndike says:—

"But if it be manifest that by the Sacrament of the Eucharist God pretends to tender us the communion of the Sacrifice of Christ upon the Cross, then there is *another* presence of the body and blood of our Lord in the Sacrament, *beside* that spiritual presence in the soul which that living faith effecteth without the Sacrament as well as in the receiving of it.

"Which kind of presence, you may, if you please, call the *representation* of the Sacrifice of Christ; so as you understand the word 'representation' to signify not the figuring or resembling of that which is only signified, but as it signifies in the Roman laws, when a man is said '*representare pecuniam*,' who pays ready money; deriving the signification of it *a re presenti* not from the preposition *re*; which will import not the presenting of that again to a man's senses which is once past, but the tendering of that to a man's possession which is tendered him on the place."—*Laws of Church*, book iii. chap. 2, p. 10.

Bishop Brevint on the question of the Sacrament being a commemorative sacrifice, says—

"There never was on earth a true religion without some kind of sacrifices \* \* \* Nevertheless this sacrifice, which by a real oblation was not to be offered more than once, is by an Eucharistical and devout commemoration to be offered up every day. This is what the Apostle calls, 'to set forth the death of the Lord;' to set it forth, I say, as well before the eyes of GOD His Father, as before the eyes of all men; and what St. Austin did explain when he said that the holy flesh of Jesus Christ was offered up in three manners, by prefiguring sacrifices under the law before His coming into the world; in real deed upon the cross; and by a Commemorative Sacrament after He is ascended into Heaven. All comes to this; first, that the sacrifice, as it is itself and in itself, can never be reiterated; yet by way of devout celebration and remembrance, it may nevertheless be reiterated every day. Secondly, that whereas the Holy Eucharist is by itself a sacrament, wherein GOD offers unto all men the blessings merited by the oblation of His Son, it likewise becomes by our remembrance a kind of sacrifice also; whereby, to obtain at His hands the same blessings, we present and expose before His eyes that same holy and precious oblation once offered."—*Brevint, Christian Sacrament and Sacrifice*. Cited in the *Eucharistica* published by the Bishop of Oxford, 1861.

"But now, under the Gospel, other kinds of sacrifices are required. We are now commanded to 'present our bodies a living sacrifice;' not to kill them, but to offer them up alive as a living sacrifice, dedicating ourselves wholly to the service of GOD. Hence all manner of good, pious, and charitable works that are done in obedience to GOD, and for his service and honour, are now called 'sacrifices,' \* \* \* particularly our open or public praying to Him,

and to Him alone, for all the good things that we want. For hereby we plainly discover that we believe Him to be the author and giver of 'every good and perfect gift.' \* \* \*

And therefore under the law itself their public prayers always went along with their daily sacrifices, both morning and evening. 'Let my prayer,' saith David, 'be set forth before Thee as an incense, and the lifting up of my hands as an evening sacrifice.' Especially considering that prayer always was and ought to be accompanied with praise and thanksgiving to GOD, which is so properly a sacrifice that it is often called by that name. 'I will offer,' saith David, 'to Thee the sacrifice of thanksgiving' (Ps. cxvii. 17); and let them sacrifice the sacrifices of thanksgiving, and declare his works with rejoicing or singing (Ps. cxvii. 12). But the sacrifice that it is most proper and peculiar to the Gospel is the Sacrament of the Lord's Supper, instituted by our Lord Himself, to succeed all the bloody sacrifices in the Mosaic law. For though we cannot say, as some do, that this is such a sacrifice whereby Christ is again offered up to GOD both for the living and the dead,"

The words which follow are important,

"yet it may as properly be called a sacrifice as any that was ever offered, except that which was offered by Christ Himself; for His, indeed, was the only true expiatory sacrifice that was ever offered. Those under the law were only types of His, and were called sacrifices simply upon that account, because they typified and represented that which he was to offer for the sins of the world; and therefore the Sacrament of Christ's Body and Blood may as well be called by that name as they were. They were typical, and this is a commemorative sacrifice."—Bishop Beveridge, cited in the *Eucharistica*, p. 202.

Field, Dean of Gloucester, in 1609, says, in his *History of the Church*, as follows:—

"We must observe, that by the name of sacrifice, gift, or present, first the oblation of the people is meant, that consisteth in bread and wine, brought and set upon the Lord's table. In which again two things are to be considered, the outward action, and that which is signified thereby; to wit, the people's dedicating themselves and all that they have to God by faith and devotion, and offering to him the sacrifice of praise. In this sense is the word sacrifice used in the former part of the canon, as I have already shewed. In respect of this is that prayer poured out to God, that he will be mindful of his servants that do offer unto him this sacrifice of praise, that is, these outward things in acknowledgment that all is of him, that they had perished if he had not sent His Son to redeem them, that unless they eat the flesh and drink the blood of Christ, they have no life; that he hath instituted Holy Sacraments of his body and blood, *under the forms of bread and wine*, in which he will not only represent, but exhibit the same unto all such as hunger and thirst after righteousness; and therefore they desire him so to accept and sanctify these their oblations of

bread and wine, which in this sort they offer unto him, that they may become unto them the body and blood of Christ, that so partaking in them they may be made partakers of Christ, and all the benefits of redemption and salvation that he hath wrought. Secondly, by the name of sacrifice is understood the sacrifice of Christ's body; wherein we must first consider the thing offered, and secondly, the manner of offering. The thing that is offered is the body of Christ, which is an eternal and perpetual propitiatory sacrifice, in that it was once offered by death upon the Cross, and hath an everlasting and never-failing force and efficacy. Touching the manner of offering Christ's body and blood, we must consider that there is a double offering of a thing to God. First, so as men are wont to do that give something to God out of that they possess, professing that they will no longer be owners of it, but that it shall be his, and serve for such uses and employments as he shall convert it to. Secondly, a man may be said to offer a thing unto God, in that he bringeth it to his presence, setteth it before his eyes, and offereth it to his view, to incline him to do something by the sight of it and respect had to it. In this sort Christ offereth himself and his body once crucified, daily in Heaven, and so intercedeth for us; not as giving it in the nature of a gift or present, for he gave himself to God once, to be holy unto Him for ever; nor in the nature of a sacrifice; for he died once for sin, and rose again never to die any more; but in that he setteth it before the eyes of God his Father, representing it unto him, and so offering it to his view to obtain grace and mercy for us. And in this sort we also offer Him daily on the altar, in that commemorating his death, and lively representing His bitter passions endured in His body upon the Cross, we offer Him that was once crucified and sacrificed for us on the Cross, and all His sufferings, to the view and gracious consideration of the Almighty, earnestly desiring, and assuredly hoping, that He will incline to pity us, and shew mercy unto us, for this His dearest Son's sake, who in our nature for us, to satisfy His displeasure and to procure us acceptance, endured such and so grievous things. This kind of offering or sacrificing Christ, commemoratively, is twofold, inward and outward; outward as the taking, breaking, and distributing the mystical bread, and pouring out the cup of blessing, which is the Communion of the Blood of Christ, the inward consisteth in the faith and devotion of the Church and people of God, so commemorating the death and passion of Christ their crucified Saviour, and representing and setting it before the eyes of the Almighty, that they fly unto it as their only stay and refuge, and beseech Him to be merciful unto them for His sake that endured all these things, to satisfy His wrath, and work their peace and good."—*Field "Of the Church,"* vol. ii., pp. 60–62.

Again in Chap. XIX. :—

"Of the Real Sacrifice of Christ's Body on the Altar, as a propitiatory Sacrifice for the quick and the dead."

"Touching the real sacrificing of Christ's Body  
NEW SERIES, 39.—ECCLES.

on the Altar, the Church never taught any such thing as the Romanists now teach, as appeareth by these testimonies following:—

"'Although,' saith Biel (*Expositio Missæ*, Lect. 85. fol. 183 b., Ludg., 1514), 'Christ was once offered when he appeared in our Flesh, He is offered, notwithstanding, daily, hidden under the veils of bread and wine, not touching any of those things which import punishment or suffering (for Christ is not daily wounded; He suffereth not; He dieth not); but for two other causes the consecration and receiving of the Holy Eucharist may be named a Sacrifice and oblation; first, because it is a representation and memorial of the true Sacrifice and holy oblation made on the Altar of the Cross; secondly, because it maketh us partakers of the effects of the same. Now, the resemblances of things, as Augustine noteth, writing to Simplicianus, are called by the names of those things whereof they are resemblances, as we are wont to say when we behold a painted table or wall, This is Cicero, this Sallustius. Whereof, seeing the celebration of this Sacrifice is a lively resemblance of the passion of Christ, which is the true sacrificing of Him, it may rightly be named the sacrificing of Him.'

"'Peter Lombard, Thomas, and the other Schoolmen,' saith Bellarmine, *Bellarmin. de Euchar.*, Lib. V. (sive de Missa, Lib. 1), Cap. 15 (Tom. iii. p. 403. Ven. 1721), 'were not careful of that which is now in question touching the daily renewed real sacrificing of Christ, but only sought to shew how the Sacrifice of the mass may be called an offering of Christ, that is, a slaying of Him; and therefore, proposing the question, whether the Eucharist be a Sacrifice, they answer, for the most part, that it may be said to be an offering or Sacrifice, because it hath a resemblance of the true and real offering which was on the Altar of the Cross, and because it communicateth unto us the effects of the true and real killing of Christ.'"—*Field "Of the Church,"* Vol. ii., pp. 370–1.

Again :—

"In that therefore the Church doth offer the true Body and Blood of Christ to God the Father, it is merely a *representative Sacrifice*, and all that is done is but the commemorating and representing of that Sacrifice which was once offered on the Cross, but in that it dedicateth itself, which is the mystical Body of Christ, unto God, it is a true, but a spiritual Sacrifice, that is, an eucharistical Sacrifice of praise, thanksgiving, and of obedience due unto God. Christ, therefore, is offered and sacrificed on the Altar, but sacramentally and mystically; in that in the Sacrament there is a commemoration and remembrance of that which was once done. Christ is not often slain, which once to think were abominable; but that which was once done is represented, that we might not forget the benefit bestowed on us, but rather be so stirred up and moved by this Sacrament, as if we saw the Lord Jesus hanging upon the Cross. The passion of the Lord, saith Cyprian, is the Sacrifice that we offer to God, that is, that we offer to the view of God, and represent unto him. Neither is

Q

it to be marvelled at that we offer the true Body of Christ to revive the memory of the former Sacrifice, and to represent it unto God, seeing the Son of God was given unto us that we might oppose him to the wrath of God as a reconciler, and that, distrustful our own strength, we might represent to the Father this most potent Sacrifice."—*Field "Of the Church,"* p. 73.

Cranmer cites Cyprian and St. Augustine on the Sacrifice, without disapprobation. He says:—

"For the cause why Cyprian and other old authors say that Christ made an oblation and offering of Himself in His Last Supper, was not that He declared there that He would suffer death, for that He had declared many times before; but the cause was, that there He ordained a perpetual memory of His death, which he would all faithful Christian people to observe from time to time, remembering His death, with thanks for His benefits, until His coming again. And therefore, the memorial of the true Sacrifice made upon the Cross, as St. Augustine saith, is called by the name of a *Sacrifice*, as a thing that signifieth another thing is called by the name of the thing which it signifieth, although in very deed it be not the same.

"And the long discourse that you make of Christ's true presence, and of the true eating of Him, and of His true assisting us in our doing His commandment, all these be true. For Christ's Flesh and Blood be in the Sacrament truly present, but spiritually and sacramentally, not carnally and corporally. And, as He is truly present, so is He truly eaten and drunken, and assisteth us; and He is the same to us that He was to them that saw Him with their bodily eyes."—*Cranmer's Works*, Vol. iii., pp. 160-1.—"*Answer to Gardynier. The Presence of Christ.*"

"How is it possible to set out more plainly the diversity of the true Sacrifice of Christ, made upon the Altar of the Cross (which was the propitiation of sin), from the Sacrifice made in the Sacrament, than Lombardus hath done in this place? For the one he calleth the true Sacrifice, the other he calleth but a memorial or representation thereof; likening the Sacrifice made in the Lord's Supper to a year's mind or anniversary, whereto is made a memorial of the death of a person, and yet it is not His death in deed. So in the Lord's Supper, according to His commandment, we remember His death, preaching, and commanding the same until His return again at the last day. And, although it be one Christ that died for us, and whose death we remember, yet it is not one Sacrifice that He made of Himself upon the Cross and that we make of Him upon the Altar or Table. For His Sacrifice was the Redemption of the world; ours is not so; His was death, ours is but a remembrance thereof. His was the taking away the sins of the world; ours is a praising and thanking for the same. And, therefore, His was satisfactory; ours is gratulatory. *It is but one Christ that was offered then and is offered now*, and yet the offerings be diverse; His was the thing, and ours is the figure. His was the original, and ours is, as it were,

a platform."—*Cranmer's Works*, Vol. iii., pp. 538-9.

"And now have I made it evident that Petrus Lombardus defaceth in no point my saying of the Sacrifice, but confirmeth fully my doctrine, as well of the Sacrifice propitiatory made by Christ Himself only, as of the Sacrifice commemorative and gratulatory made by the priests and people."—*Cranmer's Works*, p. 540.

"Hipinus saith that the old Fathers called the Supper of our Lord a Sacrifice propitiatory. I will not believe that Hipinus so said, until you appoint me both the book and place where he so saith. For the effect of his book is clean contrary, which he wrote to reprove the propitiatory Sacrifice, which the Papists feign to be in the mass. Thus indeed Hipinus writeth in one place: '*Veteres Eucharistia Deo consecrabantur et conferabantur, ad sacra ministeria, et ad necessitatem credentium.*' In which words Hipinus declareth that the Old Fathers called the Supper of our Lord a Sacrifice, for two considerations, one was for the presence of Christ's Flesh and Blood, the other was for the offering which the people gave there of their devotion, to the holy ministration and relief of the poor. But Hipinus speaketh here not one word of corporal presence, nor of propitiatory Sacrifice, but generally of presence and Sacrifice, which maketh nothing for your purpose, nor against me, *that grant both a Presence and a Sacrifice*. But when you shall shew me the places where Hipinus saith that the Old Fathers called the Lord's Supper a propitiatory Sacrifice, I shall trust you the better and him the worse."—*Cranmer's Works*, pp. 551-2.—"*The Sacrifice of Christ.*"

Archbishop Sharp says:—

"Now to the same use and purpose (say we) serves our Sacrament of *the Lord's Supper*; or, as it was called by the Ancients, the *Christian Sacrifice*. Not that we pretend in our Communions to offer up the real *Body and Blood* of Christ in Sacrifice to God, as the Papists do; for that (as the Apostle tells us) was once done by himself upon the Cross, and by that one offering he hath for ever perfected all them that are sanctified; so that there is no need of any such offering, any more. But we commemorate that Sacrifice which Christ has on this day made for us, and we thank God for it; and we heartily beseech him, that he would accept of it on our behalf, and that it may make atonement for all our sins. And we likewise feed upon it (as the Jews did upon their *Sacrifices*); that is to say, by eating of that bread which he made to be his *Body*, and drinking of that cup which he made to be his *Blood*. Now, in doing of this, we may be truly said both to offer up a Sacrifice to God, and likewise to keep a feast upon this Sacrifice. We offer up by *Commemoration and Thanksgiving* and hearty Prayer, that *Sacrifice* that was once offered by Jesus Christ at *Jerusalem*, near seventeen hundred years ago for the Salvation of all mankind; and we partake both of the *Body*



and Blood of that his Sacrifice, by partaking of the Bread and Wine that he has consecrated not only to be the *symbols* and *signs* of them, but to convey the real Benefits of his *Passion* and *Sacrifice* to all Believers. So that we may be truly said to feed at God's table whenever we receive the Sacrament."—*Archbishop Sharp's Sermons*, Vol. ii., p. 153 (Sixth Sermon).

"To come to the other Sacrament, (says Bishop Bull,) the Eucharist, or Holy Supper; this is the most sacred and mysterious rite, the apex, the top and perfection of Christian worship, as the ancients term it, and therefore it ought to be performed with the greatest reverence and solemnity in every punctilio of it, according to the direction of our Church in her rubric to the Communion Office."—*Bishop Bull*, Vol. ii., p. 22.—"*Discourse on the Pastoral Office*."

This great luminary of our Church treated the question of Sacrifice, in his answer to Bossuet, distinguishing between the Roman Sacrifice of the Mass and the Catholic Sacrifice of the Holy Eucharist.

"But alas! (he says) "these superadded articles of the Trent Creed are so far from being certain truths, that they are most of them manifest untruths, yea, gross and dangerous errors. To make this appear, I shall not refuse the pains of examining some of the chief of them.

"The first Article I shall take notice of is this: 'I profess that in the mass is offered to God, a true, proper, and propitiatory Sacrifice for the living and the dead; and that in the most Holy Sacrament of the Eucharist there is truly, and really and substantially, the Body and Blood, together with the Soul and Divinity of our Lord Jesus Christ; and that there is wrought a conversion of the whole substance of the bread into the Body and of the whole substance of the wine into the Blood, which conversion the Catholic Church calls transubstantiation.' Where this proposition ('that in the mass there is offered to God a true, proper, and propitiatory Sacrifice for the living and the dead'), having that other of the 'substantial presence of the Body and Blood of Christ in the Eucharist' immediately annexed to it, the meaning of it must necessarily be this, that in the Eucharist the very Body and Blood of Christ are again offered up to God as a propitiatory Sacrifice for the sins of men. Which is an impious proposition, derogatory to the one full satisfaction of Christ made by his death on the Cross, and contrary to express Scripture (Heb. vii. 27, and ix. 12, 25, 26, 28, and x. 12, 14). It is true the Eucharist is frequently called by the Ancient Fathers *προσφορά*, *θύσια*, an *Oblation*, a *Sacrifice*. But it is to be remembered, that they say also it is *θεία λογική και άναψακτος*, a *reasonable Sacrifice*, a *Sacrifice without blood*, which, how can it be said to be, if therein the very blood of Christ was offered up to God?

"They held the Eucharist to be a commemorative sacrifice, and so do we. This is the constant language of the ancient liturgies, 'We offer by way of commemoration;' according to our Saviour's

words when he ordained this holy rite, *Do this in commemoration of me*.

"In the Eucharist then Christ is offered, not hypostatically, as the Trent Fathers have determined, for so he was but once offered, but commemoratively only; and this commemoration is made to God the Father, and is not a bare remembering or putting ourselves in mind of him. For every sacrifice is directed to God, and the oblation therein made, whatsoever it be, hath him for its object, and not man. In the Holy Eucharist, therefore, we set before God the bread and wine, 'as figures or images of the precious blood of Christ shed for us, and of his precious body,' (they are the very words of the Clementine Liturgy,) and plead to God the merit of his Son's sacrifice once offered on the Cross for us sinners, and in this Sacrament represented, beseeching him for the sake thereof to bestow his heavenly blessings on us.

"To conclude this matter. The ancients held the oblation of the Eucharist to be answerable in some respects to the legal sacrifices, that is, they believed that our blessed Saviour ordained the Sacrament of the Eucharist as a rite of prayer and praise to God, instead of the manifold and bloody sacrifices of the law. That the legal sacrifices were rites to invoke God by is evident from many texts of Scripture; see especially 1 Sam. vii. 9 and xiii. 12, Ezra vi. 10, Prov. xv. 8; and that they were also rites for praising and blessing God for his mercies appears from 2 Chron. xxix. 27. Instead, therefore, of slaying of beasts and burning of incense, whereby they praised God and called upon his name under the Old Testament, the Fathers, I say, believed our Saviour appointed this Sacrament of bread and wine as a rite whereby to give thanks and make supplications to his Father in his name. - This you may see fully cleared and proved by the learned Mr. Mede, in his treatise entitled *The Christian Sacrifice*. The Eucharistical Sacrifice thus explained is indeed *λογική θυσία*, a *reasonable sacrifice*, widely different from that monstrous sacrifice of the mass taught in the Church of Rome.

"The ancient doctors, yea, and Liturgies of the Church, affirm the Eucharist to be *incruentum sacrificium*, 'a sacrifice without blood,' which it cannot be said to be, if the very blood of Christ were therein present and offered up to God."—*Bishop Bull*, Vol. ii., p. 251.—The Corruptions of the Church of Rome, in answer to the Bishop of Meaux's Queries.

Bishop Wilson on this subject says:—

"*Lord's Supper*.

"Private devotions at the altar, taken out of the most ancient offices of the Church, to render our present communion service more agreeable to apostolic usage, and more acceptable (I hope) to God, and beneficial to all that partake thereof. Until it shall please God to put it into the hearts and power of such as ought to do it, to restore to us the first service of Edw. VI., or such as shall be more conformable to the appointment of Christ and his Apostles, and their successors. Which may the Divine Majesty vouchsafe to grant for

his sake who first ordained this holy sacrament. Amen.

"*Before Service begins, kneeling at the Altar.*

"May it please Thee, O God, who has called us to this ministry, to make us worthy to offer unto Thee *this sacrifice* for our own sins, and for the sins of Thy people."—*Sacra Privata*, p. 104, Ox. Ed., 1854.

"*Upon placing the Bread and Wine upon the Altar.*

"Vouchsafe to receive these Thy creatures from the hands of us sinners, O thou self-sufficient God! who remembered us when we were without hope and without God in the world, and hath made us Thy brethren and heirs of Thy kingdom. *May I atone Thee, O God, by offering to Thee the pure and unbloody Sacrifice which thou hast ordained by Jesus Christ, Amen.*

"But how should I dare to offer Thee this sacrifice, if I had not first offered myself a sacrifice to Thee, my God?

"May I never offer the prayers of the faithful with polluted lips, nor distribute the bread of life with unclean hands.

"I acknowledge and receive Thee, O Jesus, as sent of God, a prophet, to make his will known to us, and His merciful purpose to save us; as our Priest who offered Himself an acceptable Sacrifice for us to satisfy the divine justice, and to make intercession for us; and as our King to rule and defend us against all our enemies."—*Sacra Privata*, p. 104, Ox. Ed., 1854.

"*Immediately after the Prayer of Consecration.*

"We offer unto Thee, our King and our God, this bread and this cup.

"We give Thee thanks for these and for all Thy mercies; beseeching Thee to send down Thy Holy Spirit upon *this sacrifice*, that He may make this bread the body of Thy Christ, and this cup the blood of Thy Christ; and that all we, who are partakers thereof, may thereby obtain remission of our sins, and all other benefits of His passion."—*Sacra Privata*, p. 106.

St. Cyprian had written in one of his letters the following passage on the Sacrifice in the Eucharist:—

"Si Jesus Christus et Dominus Deus noster, ipse est summus sacerdos Dei Patris, et *sacrificium* Patri seipsum primus obtulit, et hoc fieri in sui commemorationem præcepit; utique ille sacerdos vice Christi vere fungitur, qui id, quod Christus fecit, imitatur et *sacrificium* verum et plenum tunc offert in Ecclesia Deo Patri, si sic incipiat offerre secundum quod ipsum Christum videat obtulisse."—*Cyprian, Ep. lxiiii.*, p. 609, cited in *Waterland's Works*, Vol. vii., p. 375.

And Waterland thus deals with this passage:—

"I shall now pass on to Cyprian, to show how this matter stood, upon the *change* of language introduced in his time. We shall find him plainly speaking of the offering Christ's *body and blood*. This must be understood of an oblation subsequent to consecration, not in order to it; for Christ's body and blood, whether real or symbolical, are

holy, and could want no sanctification or consecration. He further seems to speak of offering Christ himself, in this Sacrament, unto God, but *under the symbols of consecrated bread and wine*. That may be his meaning, and the meaning is good, when rightly apprehended; for there was nothing new in it but the language or the manner of expression. What the elder Fathers would have called, and did call, the *commemorating* of Christ, or the *commemorating* His passion, His body broken, or blood shed, that Cyprian calls the *offering* of Christ, or of His passion, &c., because in a large sense, even *commemorating* is *offering*, as it is presenting the thing or the person so commemorated in the way of prayer and thanksgiving before God. I do not invent this account for the clearing a difficulty, but I take it from Cyprian himself, whose own words shew that the Eucharistical *commemoration* was all the while in his mind, and that that was all he meant by the oblation which he there speaks of, using a new name for an old thing. I shall shew in due time, that the later Fathers, who followed Cyprian's language in this particular, and who admitted this *third oblation* (as some have called it) as well as he, yet when they came to explain interpreted it to mean no more than a solemn *commemoration*, such as I have mentioned."—*Waterland's Works*, Vol. vii., p. 30.

"This is not the place to examine critically what the ancients meant by the *sacrifice* or *sacrifices* of the Eucharist; it will deserve a distinct chapter in another part of this work. But, as I before observed of oblation, that, anciently, it was understood sometimes of the *lay offering*, the same I observe now of *sacrifice*; and it is plain from Cyprian. Besides that notion of sacrifice, there was another, and a principal one, which was conceived to go along with the *Eucharistical* service, and that was, the notion of *spiritual sacrifice*, consisting of many particulars, as shall be shewn hereafter; and it was on the account of one, or both, that the Eucharist had the name of *sacrifice* for the two first centuries. But by the middle of the third century, if not sooner, it began to be called a *sacrifice*, on account of the *grand sacrifice* represented and commemorated in it; the *sign*, as such, now adopting the name of the *thing signified*. In short, the *memorial* at length came to be called a *sacrifice*, as well as an *oblation*: and it had a double claim to be so called; partly as it was in itself a *spiritual* service, or *sacrifice*, and partly as it was a representation and commemoration of the high tremendous *sacrifice* of Christ Godman. This last view of it, being of all the most awful and most endearing, came by degrees to be the most prevailing acceptance of the *Christian sacrifice*, as held forth in the Eucharist. But those who style the Eucharist a *sacrifice* on that account, took care, as often as need was, to explain it off to a *memorial* of a sacrifice rather than a strict or proper *sacrifice*, in that precise view. Cyprian, I think, is the first who plainly and directly styles the Eucharist a *sacrifice* in the *commemorative* view, and as *representing* the grand sacrifice. Not that there was anything *new* in the doctrine, but there was a *new application* of an old name, which had at the first

been brought in upon other accounts."—*Waterland's Works*, Vol. vii., pp. 37-8.

Hey, in his lectures on the Articles, says:—

"It may be objected, that the Gospel Institutions are not to be made complicated and abstruse unnecessarily. Is not the 'simplicity that is in Christ' best observed by taking the Sacrament of the Lord's Supper as a *mere commemoration*? Bishop Cleaver answers this objection in his first discourse; and Dr. Balguy answers it, in effect, in his Seventh Charge. If you make the Lord's Supper, as it was instituted by Christ, a mere commemoration, you make it a strange and unintelligible rite; for what can be more strange than eating the flesh and drinking the blood of one who is to be regarded only as an instructor and benefactor? If we had been ordered in the Sacrament to kill an animal, and shed its blood; or only to break bread, and pour out wine, the rite would be intelligible, as a simple memorial. It would have represented Christ's death, merely as a death; but it would have been a *different* rite from ours. Now conceive it as a feast on a sacrifice, and all is easy and simple. We, indeed, are not in the habit of sacrificing; but what is that? Who could not understand, that, when sacrifices were in use, part of the victim was served up at a religious feast; and all who partook of the material feast were understood to partake of the spiritual benefits of the sacrifice. Christ was our Victim; on his body we do not feast literally, because it is in heaven; but he appointed bread to represent it. On that we can feast, and so partake of his body; that is, feast upon the Victim. Such bread is 'the Bread of Life,' because, by his own appointment, it represents his *Flesh*. This appears to me plain and simple."—*Hey's Lectures in Divinity*, Vol. iv., p. 349.

I will now advert to the language of Mr. Keble, in his work on Eucharistical Adoration, published in 1857.

"The true oblation" (he says) "in the *Christian sacrifice* is in no sense earthly or material. It is altogether spiritual; the chief of those spiritual sacrifices in the offering whereof consists the common priesthood of us all. The Eucharist comprehends them all in one; and has, besides, peculiar to itself, that which alone causes any of them to be acceptable. For the true oblation in the Eucharist is not the bread and wine; that is only as the vessel which contains or the garment which veils it; but that which our Lord by the hands of the priest offers to His Father in the Holy Eucharist is His own body and blood, the very same which He offers and presents to Him, with which, as St. Paul says, He appears before Him *now*, night and day continually in heaven, in commemoration of His having offered it once for all in His passion and death on the Cross. It is the one great reality, summing up in itself all the memorial sacrifices of old. In the Christian scheme, it is 'proportionable' to them; and of course it stands in the same rank and relation to them, as the other antetypes in the gospel to their several types and shadows in the law.

"The memorial therefore made of Christ before the Father in Holy Communion is as much more real, more glorious, more blessed, than all the memorial sacrifices of old; than the yearly paschal lamb, for instance; as the one atoning sacrifice on the Cross surpassed the lamb slain at the first Passover; as the descent of the Holy Spirit at Pentecost surpassed the fire on the burnt offering; as Christ is more glorious than Aaron or Melchisedec; heaven, with the tree of life and the waters of life, more blessed than the land flowing with milk and honey; the new Jerusalem more true and real than the old; he who thinks most highly, and therefore least inadequately, of that holy and divine Sacrament, cannot well say, or conceive anything of it higher than this, that it is, in the strict sense of the word, 'that which the Gospel hath proportionable to ancient sacrifices.'"—*Keble on Eucharistical Adoration*, pp. 70-71.

And in his sermons preached before the University of Oxford in 1848 he says:—

"And first, for doctrine. Have we not indeed, in the words of the text alone, the substance of the Eucharistical office, in both its parts—both in its sacrificial and in its sacramental character? 'I sanctify myself,'—there is the sacrifice, that they also may be sanctified 'through the truth;' there is the sacrament. Are not these plainly the guiding, the prevailing thoughts, which He our great teacher and exemplar, would have us associate with the services of His sacred altar?

"For thus it is:—After ordaining the Eucharist for a remembrance or memorial of himself, having also by solemn prayer commended to His Father His apostles first, and in them all who should believe on Him through their word, He sums up the effect of what He was doing and saying. 'For their sakes I am sanctifying myself, that they also may be sanctified through the truth.'

"Our blessed Lord then was sanctifying Himself, that is, setting himself apart, devoting or offering up Himself, his own body and blood, to be the conveyance of like sanctification to us. He was making Himself a sacrifice, that we being joined to Him might be holy and lively sacrifices. And all this 'through the truth,' by participation, namely, of Him who is the very truth and reality, the substance of which the old sacrifices were shadows.

"I repeat it, this one saying of Christ conveys apparently in itself, the two chief points of the evangelical doctrine concerning the holy and blessed Eucharist; first, that it is His memorial sacrifice; a means of obtaining God's favour and pardon for all such as truly repent; next, that it is a most high sacrament, a mean whereby we are united to Christ, and so made more and more partakers of His righteousness here, and of His glory hereafter.

"When we say 'a memorial sacrifice' we mean, that the offering in the Holy Communion does not only put us in mind of the great unspeakable things which Christ has done for us, but also that it puts God in mind of them, so the Scripture vouchsafes to speak, over and over putting into our mouth the word

'remember,' when we are being taught to pray. So our Lord, in the very words of consecration, 'This do for the memorial of Me.' So the meat and bread offering mentioned so often in the Old Testament, especially in that manual for sacrifice, the Book of Leviticus, is constantly said to be offered 'for a memorial;' and without all controversy it was a type and shadow of that which we Christians present on our altars.

"The Eucharist, therefore, is a memorial or commemorative sacrifice; that is, God graciously receives what we break, pour out, and offer, as though His Son presented before Him His very own body and blood. He receives it as a continuation of that first awful Eucharist, according to the saying of the wise man, 'I know that whatsoever God doeth, it shall be for ever.' 'He smelleth,' as the Bible speaks, 'a sweet savour,' and is favourable and merciful unto us for the sake of Christ so offering Himself before Him."—*Sermons by the Rev. John Keble, M.A.* Published by Parker (1848), Oxford, pp. 259-262.

Cleaver, Bishop of St. Asaph, preached several sermons on the Holy Eucharist before the University of Oxford in 1787-1790. In them he dwells largely on the doctrine that the Lord's Supper was a *feast on a sacrifice*. From these I make the following extracts:—

"But that I may not repeat what has been already urged upon many of these words, I will simply call to your recollection their general relation to a *sacrifice* by a bare recital of the institution, as it is given by St. Matthew, which is as follows: 'And as they were eating, Jesus took bread, and blessed it, and brake it, and gave it to the disciples and said, Take eat, this is my body; and he took the cup, and gave it to them, saying, Drink ye all of it; for this is my blood of the New Testament which is shed for many for the remission of sins.' Here, I think, I might safely rest my general argument, that easy as the connexion between the parts of this proposition 'Take eat, this is my body,' and again of this 'Drink ye all of this, for this is my blood,' may appear when unexamined, and few as the words of institution are, the real connexion in the parts of the two propositions can be explained satisfactorily upon no other supposition than that of their allusion to a *sacrifice*, without which a great share of the few words in each of the passages reciting the institution will be superfluous and unintelligible, and all of them ill explained. I may, therefore, I hope, without being unduly sanguine, assert that the idea of a *sacrifice* is the primary and leading idea of this institution."

The Bishop then says that it does not exactly correspond with any one species of sacrifice under the Mosaic law.

"The truth is, if it be a representation or application of the sacrifice of the death of Christ, it must correspond not exactly with one but essentially with all the sacrifices of the law. 'For as all the sacrifices were types of this great event,

and as the event itself must correspond to its own types, so must whatever institution be made to represent that event. *The rite, therefore, which should fully shew the Lord's death, must shew the sacrifice made by that death*, which doubtless was St. Paul's meaning; a sacrifice upon which alone the merits and efficacy of that death are founded; for it is in the blood of Christ sacrificially shed that the Scriptures found the notion of propitiation, of atonement, and of forgiveness.

"Ancients and moderns have considered it under distinct points of view; used distinct appellations: e.g., '*Christian sacrifice*,' '*Christian passover*,' '*Christian oblation*,' 'the Eucharist,' &c., the language of our Church, 'a continual remembrance of the *sacrifice* of the death of Christ.'

(P. 22.) "I have not contended that the institution is a *material and proper sacrifice*, because the command is not, as in the vision shown to St. Peter, 'Slay and eat,' but eat—'This is my body, which is broken for you;' drink, 'This is my blood, which is shed for you.' Thus St. Paul,—'*Christ our passover is slain*, therefore let us keep the feast.' And again, when he compares the table of the Lord, not the altar, with the table of devils, it is evident that he considers it as a *feast upon a sacrifice*, unless we could suppose the apostle to draw his argument from a case not parallel. There is, too, a remarkable passage in Ezekiel (xxxix. 17), the words of which on the subject are peculiarly apposite to this point, where the fowls are invited 'to eat the flesh and drink the blood of the sacrifice,' to which it is added, 'Thus shall ye be filled at my table.'

Bishop Moberly's opinion is as follows:—

"Shall I ask," he says, "whether the feast which they there celebrate is or is not a sacrifice? Brethren, bear with me while I venture to say that I am not very careful, so far as I can judge, to answer the question. Indeed, it appears to me to be little more than a question of words, which bears upon no important issue. The feast is what it is; and whether that is or is not what constitutes a sacrifice must depend altogether upon the precise meaning attached to the word '*sacrifice*,' and the definition given to it. There surely are good and innocent senses in which it may well and rightly be so called. There surely is a sense,—the highest,—that in which the actual offering of the Lord's body and blood upon the altar of the cross was once offered, the only full, perfect, and sufficient sacrifice, oblation, and satisfaction for the sins of the whole world,—in which we may not dare so to call it."—*Moberly's Bampton Lectures*, pp. 174-5.

"I know not why we should not rest content to speak in the language of St. Chrysostom, which I have already quoted, and to call the holy feast which we celebrate our *Θυσία*, or '*Ἀνθύμνησις τῆς Θυσίας*, our sacrifice or recollection of the sacrifice."—*Moberly's Bampton Lectures*, p. 176.

I will conclude with two short extracts from the treatise of the present Bishop of Ely on the 39 Articles.

Writing upon the 31st Article, he says:—

"It cannot be doubted that from the very first the Fathers spoke of the Eucharist under the name of an offering or sacrifice.

\* \* \* \* \*

"The dread of the mass which has prevailed generally among the reformed Churches, has made the majority of their members fear to speak at all concerning an Eucharistic sacrifice.

"Yet there have not been wanting, in the English Church especially, men of profound learning, deep piety, and some of them by no means attached to peculiar schools of doctrine, who have advocated the propriety of speaking of the *Christian sacrifice*, and of adopting in some measure the language of the primitive Church respecting it."—*Expos. of 39 Articles*, pp. 737, 745-6.

The language of Mr. Bennett upon the subject of sacrifice is consistent with the doctrine of a sacrament of commemoration, and does not necessarily imply a sacrifice of propitiation; and it does not, in my opinion, necessarily or directly conflict with the Articles of Religion, nor with the 82nd Canon, nor with the passages selected from the office of the Holy Communion set forth in the criminal articles; nor has it exceeded that liberty of expression which has been used by the divines whom I have cited.

*Adoration of the Holy Elements.—Of Christ in the Holy Elements.*

With respect to the third category, the promoter alleges that the defendant has promulgated the following doctrines:—"In or by the passage lettered H, that adoration or worship is due to the consecrated bread and wine. In or by the passages lettered N, O, and S, that adoration is due to Christ, present upon the altars or communion tables of the Church in the sacrament of the Holy Communion under the form of bread and wine, on the ground that under their veil is the sacred body and blood of our Lord and Saviour Jesus Christ."

Mr. Bennett in the earlier editions of his pamphlet used these expressions:—"Who myself adore and teach the people to adore the consecrated elements, believing Christ to be in them—believing that under their veil is the sacred body and blood of my Lord and Saviour Jesus Christ."

It seems to me that the first of these sentences does contravene the mind of the Church as expressed in the declaration about kneeling, which is at the close of the Order of the Administration of the Lord's Supper; and though, as will be seen, these words are not without some countenance from considerable authority, they are in my judgment to be reprehended.

The words of the declaration are:—"Yet,

lest the same kneeling should by any persons, either out of ignorance or infirmity, or out of malice or obstinacy, be misconstrued or depraved, it is hereby declared that thereby no adoration is intended, or ought to be done, either unto the sacramental bread or wine there bodily received, or unto any corporal presence of Christ's natural flesh and blood. For the sacramental bread and wine remain still in their very natural substances, and therefore may not be adored (for that were idolatry to be abhorred of all faithful Christians); and the natural body and blood of our Saviour Christ are in heaven, and not here; it being against the truth of Christ's natural body to be at one time in more places than one."

Mr. Bennett has, however, been apprised of the error into which his slight acquaintance with the subject has led him, and in his latest edition this reprehensible language is withdrawn and the following language substituted for it:—"Who myself adore and teach the people to adore Christ present in the Sacrament, under the form of bread and wine, believing that under their veil is the sacred body and blood of my Lord and Saviour Jesus Christ."

I have dealt with the question as to the expression "under the form of bread and wine," and have decided that it may be lawfully used. It remains to be considered whether to profess and teach the adoration of Christ present in the Sacrament is unlawful.

Such a doctrine is not at variance with the declaration of kneeling, which discountenances the worship of the elements and of the corporal presence of Christ.

Nor is it repugnant to the 28th Article of Religion, as suggested by the promoter, for it contains no declaration against the adoration of the spiritual presence of Christ in the Holy Eucharist.

Entertaining this opinion, it is perhaps hardly necessary to refer to authorities in favour of the proposition, that the adoration of the spiritual presence of Christ in the Eucharist may lawfully be maintained.

Some, however, I will mention.

In the dialogue between Ridley and his Papal adversary are these passages:—

"*Glyn*.—Augustine against Faustus, 'Some there were which thought us, instead of bread and of the cup, to worship Ceres and Bacchus.' Upon this place I gather, that there was an adoration of the Sacrament among the Fathers; and Erasmus, in an epistle to the brethren of Low Germany, saith that the worshipping of the Sacrament was before Augustine and Cyprian.

"*Ridley*.—We do handle the signs reverently: but we worship the Sacrament as a Sacrament, not as the thing signified by the Sacrament.

"*Glyn.*—What is the symbol or Sacrament ?

"*Ridley.*—Bread.

"*Glyn.*—Ergo, we worship bread.

"*Ridley.*—There is a deceit in this word 'adoramus.' We worship the symbols, when reverently we handle them. We worship Christ wheresoever we perceive His benefits; but we understand His benefits to be greatest in the Sacrament.

"*Glyn.*—So I may fall down before the bench here, and worship Christ; and if any man ask me what I do, I may answer, I worship Christ.

"*Ridley.*—We adore and worship Christ in the Eucharist. And if you mean the external Sacrament, I say, that also is to be worshipped as a Sacrament."—*Works*, p. 236.

Bishop Poynet, in his treatise on the Eucharist, says :—

"Here a scruple arises. If we believe the grace and virtue of the real body to be conjoined with the bread and wine, we shall seem to attribute too much to the elements, and hence a twofold evil will arise—1, the adoration of the Sacrament and the peril of idolatry, and 2, that the wicked who partake of the Sacrament eat at the same time the body of Christ, and are partakers of His grace. But this latter cannot take place, for 'Whoso eateth me,' saith Christ, 'shall live for ever;' and 'if any man eat of this bread he shall live for ever,' which cannot be understood of the wicked."

That is, so as to be partakers of His grace, as is more fully explained in the passage I have already given.—See p. 101.

"As to the worship, I reply, that the ancients partook of the Sacrament with the utmost reverence and honour, and yet were safe from idolatry. . . . For as to their worshipping what they received, Augustine plainly testifies on the 98th Psalm, when he says, 'He has given the same flesh to you to eat to salvation, but no one eats that flesh without first adoring, and not only do we not sin by adoring, but we sin by not adoring.' Also, Prosper, 'In the species of bread and wine which we see, we honour invisible things, that is, the flesh and blood.' Also, Eusebius Emisenus, 'When thou ascendest the reverend altar to be filled with spiritual food, behold, honour and wonder at the holy body of thy God.' And Chrysostom (1 Cor. x. Hom. XXIV.), 'I will shew you upon earth what is worthy of this highest honour. For, as palaces, not the walls, not the golden roof, but the royal body seated on the throne, is the most excellent of all; so also is the royal body in Heaven now proposed to your view on earth. I do not shew you angels nor archangels nor the heaven of heavens, but the Lord of all these.' Ambrose (1 Cor. xi.), 'The Eucharist is spiritual medicine, which, tasted with reverence, purifies the devout receiver.' And again, 'The Holy Communion is to be approached with a devout mind, and with fear, that the mind may know that reverence is due to Him whose body it approaches to receive.' Theodoret (Dial. 2), 'Nor after sanctification do those mystical symbols differ from their proper nature, but remain in their former substance, and

figure, and appearance (species), and are therefore both seen and felt as before. But they are understood to be that which they are made, and are believed to be so, and are worshipped, as being the things which they are believed.' From this and other places it is easily understood with what honour, with what reverence, the ancients approached to the Holy Communion. Nor is this to be wondered at, when they believed that they took, in that bread, the truth, nature, and virtue, of the true body of Christ, and were far from idolatry, being diligently instructed and taught that they did not worship the outward sign, but the inward virtue, which Augustin shews by these words (De Doct. Christ., lib. iii. cap. 9): 'For he but serves the sign who performs or venerates any significant thing, not knowing what it signifies; but he who performs or venerates a useful sign instituted by God, the power and signification of which he understands, does not venerate the transient thing which he sees, but rather that to which all such things are to be referred.' And again, afterwards, 'At this time, by the resurrection of our Lord Jesus Christ, a more manifest proof of our liberty has taken place, nor are we burdened with the heavy load of those signs which we now understand, but the Lord and apostolic discipline have handed down, in place of many, some few things, and easy to be performed, as the sacrament of baptism, and the celebration of the body and blood of the Lord, which each person when he receives, being well instructed, knows what they signify, and worships them, not with carnal servitude, but with spiritual liberty.'"

Thorndike says :—

"I suppose that the body and blood of Christ may be adored wheresoever they are, and must be adored by a good Christian, where the custom of the Church which a Christian is obliged to communicate with requires it. . . .

"But I suppose, further, that the body and blood of Christ is not adored nor to be adored by Christians, neither for itself nor for any endowment residing in it, which it may have received by being personally united with the Godhead of Christ, but only in consideration of the said Godhead, to which it remains inseparably united, wheresoever it becomes. For by that means whosoever proposeth not to himself the consideration of the body and blood of Christ as it is of itself and in itself a mere creature (which he that doth not on purpose cannot do), cannot but consider It as he believes It to be, being a Christian; and considering It as It is, honour It as It is, inseparably united to the Godhead, in which and by which it subsisteth, in which, therefore, that honour resteth, and to which it tendeth—so the Godhead of Christ is the thing that is honoured, and the reason why it is honoured, both. The body and blood of Christ, though It be necessarily honoured because necessarily united to that which is honoured, yet is It only the thing that is honoured, and not the reason why It is honoured, speaking of the honour proper to God alone.

"I suppose, further, that it is the duty of every

Christian to honour our Lord Christ as God subsisting in human flesh, whether by professing Him such, or by praying to Him as such, or by using any bodily gesture, which by the custom of them that frequent it may serve to signify that indeed he takes Him for such, which gesture is outwardly that worship of the heart which inwardly commands it.

"This honour then being the duty of an affirmative precept, which, according to the received rule, ties always (though it cannot tie a man to do the duty always, because then he should do nothing else), what remains but a just occasion to make it requisite, and presently to take hold and oblige.

"And is not the *presence thereof* in the sacrament of the Eucharist a just occasion, presently to express by the bodily act of adoration, that inward honour which we *always carry towards our Lord Christ as God*? Grant that there may be question whether it be a just occasion or not:" [he goes on to say in substance, that] "supposing the custom of the Church to have determined it, it shall be so far from an act of idolatry, that it shall be the duty of a good Christian." . . . but that "if the Church hath not determined it" (though for some occasions it may become offensive and not due), "yet it can never become an act of idolatry."—*Laws of Church*, Book III., chap. 31, §§ 1-10.

Dean Brevint, in his *Christian Sacrament and Sacrifice*, says:—

"The second is an act of adoration and reverence when he looks upon that good hand that hath consecrated for the use of the Church the memorial of these great things. I cannot, without some degree of devotion, look on any object that in anywise puts me in mind of the sufferings of my Saviour, and if I did perceive but any cloud somewhat like them, although it were but casual, I would not neglect the accident that had caused that resemblance, but since the good hand of my God hath purposely contrived it thus to set before me what I see, and since by His special appointment, these representatives are brought in hither for this Church, and among all the rest for me, I must mind what Israel did when the cloud filled the tabernacle. I will not fail to worship God as soon as I perceive these sacraments and gospel clouds appearing in the sanctuary. Here I worship neither sacrament nor tabernacle, but I will observe the manner that Moses, David, and all Israel have taught me to receive poor elements with after the institution of God hath once raised them to the estate of mysteries. Neither the ark nor any clouds were ever adored in Israel; but sure it is the ark was considered quite otherwise than an ordinary chest, and the cloud than a vapour, as soon as God had hallowed them both to be the signs of His presence. Therefore, as the former people did never see the Temple or cloud, but that presently at that sight they used to throw themselves on their faces, I will never behold these better and surer sacraments of the glorious mercies of God, but as soon as I see them used in the Church to that holy purpose that Christ hath consecrated

them to *I will not fail both to remember my Saviour who consecrated those sacraments, and to worship also my Saviour whom those sacraments do represent.*"—*Christian Sacrament and Sacrifice*, s. ii. 5, 8. Cited in the *Eucharistica*.

Bishop Andrewes, in his controversy with Bellarmine, setting forth the true doctrine of the Church of England, and contrasting it with that of Rome, says:—

"In *adoratione Sacramenti*, ad limitem ipsum turpiter impingit. *Sacramenti* ait, id est *Christi Domini* in Sacramento, miro, sed vero modo presentis. Apage vero. Quis ei hoc dederit? *Sacramenti*, id est, *Christi* in Sacramento. Imo, *Christus* ipse *Sacramenti* res, in, et cum Sacramento; extra, et sine Sacramento, *ubi ubi est adorandus est*. Rex autem *Christum* in Eucharistia vere *presentem*, vere et adorandum statuit, rem scilicet *Sacramenti*, at non *Sacramentum*, terrenam scilicet partem, ut Irenæus, visibilem, ut Augustinus . . . . . Nos vero et in mysteriis carnem *Christi* adoramus, cum Ambrosio, et non, id, sed *Eum* qui super altare colitur. Male enim, quid ibi colatur, querit Cardinalis, cum quis, debuit, cum Nazianzenus, *Eum* dicat, non id. Nec carnem manducamus, quin adoremus prius, cum Augustino, et *Sacramentum* tamen nullo modo adoramus."—Ad Card. Bellarmin. *Apolog.*, pp. 266, 267.

Still more emphatic is the language of Bishop Taylor:—

"Place thyself upon thy knees in the devoutest and humblest posture of worshippers, and think not much in the lowest manner to worship the King of men and angels, the Lord of heaven and earth, the great Lover of souls, and the Saviour of the body, Him whom all the angels of God worship, Him whom thou confessest worthy of all, and whom all the world shall adore, and before whom they shall tremble at the day of judgment. *For if Christ be not there after a peculiar manner, whom or whose body do we receive? But if He be present, not in mystery only, but in blessing also, why do we not worship?* But all the Christians always did so from time immemorial. 'No man eats this flesh unless he first adores,' said St. Austin, 'for the wise men and barbarians did worship this body in the manger, with very much fear and reverence. Let us, therefore, who are citizens of heaven, at least not fall short of the barbarians. But thou seest Him not in the manger, but on the altar. And thou beholdest Him not in the Virgin's arms, but represented by the priest, and brought to thee in sacrifice by the Holy Spirit of God.' So St. Chrysostom argues, and accordingly this reverence is practised by the Churches of the East, and West, and South, by the Christians of India, by all the Greeks, as appears in their answer to the Cardinal of Guise, by all the Lutheran Churches, by all the world, says Erasmus, only now of late some have excepted themselves. But the Church of England chooses to follow the reason and piety of the thing itself, the example of the primitive Church, and the consenting voice of Christendom."—*Worthy Commu-*

R

NEW SERIES, 39.—ECCLES.

*micant*, chap. vii. sect. 1, par. 10, vol. viii., pp. 224, 225; Eden's edit.

And again :—

"One thing I desire to warn you of, that is, that these phrases (scil. in the Fathers) of '*Adorato Altari*,' and '*προσκύπτειν τῇ θυσιαστηρίῳ*,' must be understood warily, and as they were meant; not that any divine adoration was given to the altars either relatively or transitively; but they are the metonymical expressions of the subject. For the adjuncts, *adoratis altaribus*, that is, *adorato Christo presenti in altaribus, inclinatio capite ad altare*, that is, *inclinatio capite ad Deum ibidem atque in sacris residentem*, we have good warrant to authorise this expression."—Taylor's Works, vol. v., p. 315.

I conclude my extracts from English divines with the following passage from Mr. Keble's work on Eucharistical Adoration, published in 1857 :—

"Thus we seem to have evidence irresistible that down to the beginning of the ninth century, *i. e.* through all the ages of comparatively unbroken unity in the Church, the body and blood of the Man Christ Jesus, of Him who is God and Man, was adored as present after consecration in the Eucharist; *i. e.* Christ Himself was adored as present by the presence of His body and blood. Neither the depravers of the faith on the one hand, nor the maintainers of purity of worship on the other, ever seem to have found any difficulty in that point. Who can help concluding that it came down direct from the Apostles, especially considering what I will venture to call the strong presumption made out in favour of it from Holy Scripture and natural piety? It will have been seen that both St. Ambrose and St. Augustine use expressions and arguments which would be quite unwarrantable, unless they knew the practice to be a real apostolical tradition. St. Ambrose's '*hodieque*,' and St. Augustine's '*Nemo manducat, nisi qui prius adoraverit*,' would be neither of them honest sayings, were they not uttered under that conviction; and their arguments, grounded as they are on the two great and simple verities of the incarnation and the real presence, are of course good for all times as well as for their own."—Pp. 112, 113.

I have noticed the historical fact that Cramer's tendencies became strongly Lutheran before he died, and that the Council of Augsburg very materially influenced the language of our Articles (Archbishop Laurence, *Bampton Lectures*, Lecture I.). Chemnitz, a very stout Lutheran, wrote an examination of the Council of Trent, in which examination, while he strongly condemned Transubstantiation, he defended the worship of our Lord in the holy elements. The passage is not unimportant; it is as follows :—(11).

(11) Chemnitz or Chemnitius, born 1522, died 1586. In 1554 he wrote, among other works,

"First, it must be shewn, what in this fifth chapter and sixth canon is the matter of controversy. For some things, I readily admit, are uncontroversial. For that Christ, God and Man, is to be adored, no one but an Arian denies. And that His human nature also, on account of its union with his Godhead, is to be adored, no one but a Nestorian questions. For when the Eternal Father brought the only begotten Son into the world, He saith, let all the Angels worship Him. As Matthew also plainly beareth witness (c. xxviii.) that the Apostles in Galilee worshipped Christ. It is certain, moreover, that the adoration of God is not tied to place or time (John iv., 1 Tim. ii.) *Christ then at all times, and in all places, is to be adored*. If then we believe, that Christ, God and Man, is, in a peculiar mode of presence and of grace, present at the celebration of His Supper, so that he there, truly and substantially, exhibits to communicants His own body and blood, whereby He willeth so to unite Himself to us, that to each who receives with faith, He, by this most precious pledge, applies and seals the gifts of the New Testament, which, through the giving up of His blood, He obtained for His Church :—if, I say, we believe these things truly, from our heart, it neither can nor ought to be *but that faith should venerate and adore Christ present in that action*. So Jacob (Gen. xviii.), Moses (Exod. xxxiv.), Elijah (1 Kings xix.), had no special command to worship God in those places; but since they had a general command to worship God everywhere, and were certain that God was truly *present under outward and visible symbols*, and that He was revealing Himself there in a special and gracious manner, they assuredly worshipped God Himself there, whom they believed to be present there. Nor would their faith have been true, if invocation or adoration, *i. e.* the honour due to God, had not been followed" (12).

#### Conclusions of fact.

I am happy to arrive at the close of the premisses from which my legal conclusion is to be drawn.

I am conscious of the great length at which these premisses have been stated, and of the charge of prolixity to which so full a statement may expose me.

But while I have had a very arduous duty to discharge, I have not had that measure of assistance which a Court of justice usually receives.

Mr. Bennett, who has caused all this litigation upon the subject of all others which ought not to be litigated, has not appeared

*Repetitio sanæ doctrinæ de verâ præsentia corporis et sanguinis Domini in cænâ sacrâ*, Leipzig, 1554; and in 1585, *Examen Concilii Tridentini*, Frankfurt, 1585, which has been translated into English. This work had a great reputation.

(12) Cited in *The Real Presence*, by the Rev. Dr. Pusey (Oxford, 1857), pp. 334-5.



before the Court of his metropolitan to justify or defend himself.

The case has been argued on one side only.

This prosecution, it has been said, is directed against Mr. Bennett alone. But I cannot shut my eyes to the fact that I am not trying Mr. Bennett alone, but also divines eminent for piety, learning, and eloquence, whose opinions Mr. Bennett has borrowed, and in some respects caricatured, but does not allow, by the course which he has taken, to be vindicated or explained.

I have, therefore, thought myself obliged, not only to investigate according to the utmost of my power all the authorities which could throw light on the subject in dispute, but to express the result of my research with a fulness of detail which, if the case had been defended, would have been unnecessary for the purposes of justice.

I have thought it right that those who have to consider my judgment should be in possession of the authorities which have influenced it.

Being compelled to speak judicially as to the law of our Church relative to this great mystery, I hope, at least, that I have said nothing respecting the Supper of our Lord, which, in the words of our old divine and poet, may yet further tend to—

“Make this banquet prove  
A Sacrament of war, and not of love” (13).

By the expressions, “The real, actual, and visible presence of our Lord upon the altars of our churches,” and “Who myself adore, and teach the people to adore, the consecrated elements, believing Christ to be in them—believing that under their veil is the sacred body and blood of my Lord and Saviour Jesus Christ”—I have no doubt that Mr. Bennett has contravened the plain meaning and clear intent of the formularies of the Church. But he has, in a later edition, withdrawn these words, and substituted others for them:—for “the real, actual, and visible presence of our Lord upon the altars of our churches,” he substitutes, “the real, actual presence of our Lord, under the form of bread and wine, upon the altars of our churches;” and for the words, “Who myself adore, and teach the people to adore, the consecrated elements, believing Christ to be in them,” he substitutes the words, “Who myself adore, and teach the people to adore, Christ present in the Sacrament under the form of bread and wine.”

It is to be regretted that these material alterations are unaccompanied by any ex-

pressions of regret or self-reproach for the mischief which his crude and rash expressions have caused.

Mr. Bennett says—

“My meaning, and that which passed through my mind in writing the original passages, was precisely the same as that which is now conveyed in the words substituted, but as the original words were liable to a different construction from that in which I used them, I therefore most willingly in this edition adopt another formula to express my meaning. The formula now adopted, and which, without any doubt, will convey the doctrine of the real presence, as the Church would teach it, has been suggested to me by him whose name stands at the head of this pamphlet” (that is to say, the Rev. E. B. Pusey, D.D.); “one to whom the whole Church would implicitly bow and all revere. I have no hesitation in adopting his words as my own, fully and completely.”

I do not, however, sit here as a critic of style, or an arbiter of taste, or a censor of logic. I have not to try Mr. Bennett for careless language, for feeble reasoning, or superficial knowledge. It is my duty to decide whether the words in which he now expresses himself, and which he professes to have since borrowed from a profound theologian, occupying one of the highest positions in the University of Oxford, do or do not contravene the formularies of our faith.

If I were to pronounce that they did so, I should be passing sentence, in my opinion, upon a long roll of illustrious divines, who have adorned our universities and fought the good fight of our Church, from Ridley to Keble,—from the divine whose martyrdom the cross at Oxford commemorates, to the divine in whose honour that university has just founded her last college. Moreover, I could not pronounce such a sentence without disregarding judicial authority of the gravest kind.

For, as I have already observed, in Mr. Gorham's case the judge said—

“The writers whom we have cited are not always consistent with themselves, nor are the reasons upon which they found their positions always valid; and other writers of great eminence, and worthy of great respect, have expressed very different opinions. But the mere fact that such opinions have been propounded and maintained by persons so eminent, and so much respected, as well as by very many others, appears to us sufficiently to prove that the liberty which was left by the Articles and Formularies has been actually enjoyed and exercised by the members and ministers of the Church of England.”

And in Mr. Heath's case the judge said:—

“If the doctrine in question has been held without offence by eminent divines of the Church,

(13) Vide ante, note to page 75.

then, though perhaps difficult to be reconciled with the plain meaning of the Articles of Religion, still a Judge in my position ought not to impute blame to those who hold it. That which has been allowed or tolerated in the Church ought not to be questioned by this Court."

In the case of *Essays and Reviews* the Privy Council held that even the words "everlasting fire" might be treated by a clergyman as not denoting the eternity of punishment, regard being had to the absence of any interpretation of the words in the Formularies, to the opinion of learned men respecting the words, and to a liberty of opinion exercised on the subject by certain divines without restraint.

Now I have shown that no mode of the presence is defined by the Formularies, and by a large induction of instances that the present opinions for which Mr. Bennett is articulated are not, however loosely expressed, distinguishable in substance from those which have been maintained for many years by many great divines of our Church, and by many learned men.

#### *Conclusions of Law—Sentence.*

The conclusions of law at which I have arrived are the following:—

With respect to the first and uncorrected edition of his pamphlet, I pronounce that Mr. Bennett, by his language respecting the visible presence of our Lord, and the adoration of the consecrated elements, has contravened the law of the Church.

If Mr. Bennett had not renounced this language and substituted other for it, I must have considered whether I ought not to pass a sentence of suspension upon him, accompanied by a monition to abstain from such language.

The question is not now before me whether this retraction of Mr. Bennett would have sufficed to satisfy the severe provisions of the statute of Elizabeth (13 Eliz. c. 12), but whether this retraction, however ungraciously made, be not sufficient under the general law to indicate that he has finally abandoned the unlawful expressions which he had used.

I think on the whole they are sufficient for this purpose.

With respect to the second and corrected edition of his pamphlet, and the other work for which he is articulated, I say that the objective, actual, and real presence, or the spiritual, real presence, a presence external to the act of the communicant, appears to me to be the doctrine which the Formularies of our Church, duly considered and construed so as to be harmonious, intended to main-

tain. But I do not lay down this as a position of law, nor do I say that what is called the receptionist doctrine is inadmissible; nor do I pronounce on any other teaching with respect to the mode of presence. I mean to do no such thing by this judgment. I mean by it to pronounce only that to describe the mode of presence as objective, real, actual, and spiritual, is certainly not contrary to law.

With respect to the other charges, namely those relating to Sacrifice and Worship, I pronounce that Mr. Bennett has not exceeded the liberty which the law allows upon these subjects.

I make no order as to costs.

Proctors—Moore & Currey.

#### [IN THE PRIVY COUNCIL.]

1870.	{	CHARLES JAMES ELPHINSTONE,
July 4,		appellant,
14.		THE REV. JOHN PURCHAS, CLERK,
		respondent.*

*Ecclesiastical Law — Practice — Church Discipline Act (3 & 4 Vict. c. 86) — Promoter, Death of.*

*In a proceeding under the Church Discipline Act at the suit of a promoter, judgment was given in the Arches Court, and the promoter appealed to Her Majesty in Council. After the appeal was filed and before hearing, the promoter died. On motion to substitute a parishioner in the place of the original promoter:—Held, that it is the duty of the Court before which proceedings are pending, when a promoter dies, to allow a proper promoter to be substituted in the place of the original promoter.*

This was a motion arising upon an appeal from a decree of the Dean of the Arches Court of Canterbury, in a cause of the office of the Judge depending in the said Court, promoted by Charles James Elphinstone, of Brighton, in the county of Sussex, deceased, against the Rev. John Purchas, clerk, the perpetual curate of the church of St. James at Brighton.

The cause was promoted in the Arches Court by letters of request from the Right Rev. Ashurst Turner, late Lord

\* Present, the Archbishop of York (Dr. Thomson), Lord Cairns, Sir J. Collville, and Sir R. Phillimore.

Bishop of Chichester; and by the articles admitted in the said cause the said John Purchas was charged with various offences against the laws ecclesiastical.

The said John Purchas did not appear in the said cause, and the proceedings were carried on by default; and afterwards the judge of the said Court of Arches duly pronounced that the said John Purchas had offended in certain particulars against the laws ecclesiastical, and admonished him accordingly, and condemned him in the costs.

The promoter, the said Charles James Elphinstone, appealed from this decree upon certain matters in the petition of appeal particularly alleged, and upon which the judge of the said Court of Arches omitted or declined to pronounce that the said John Purchas had offended against the laws ecclesiastical.

The appeal was duly filed on the 16th of February, 1870, and the usual citation was served on the Rev. John Purchas and on the registrar of the Arches Court.

The appellant, Charles James Elphinstone, died on the 30th March, 1870.

Henry Hebbert, Esq., of Brighton, now moved to be admitted and substituted as promoter of the office of the Judge in the said appeal in the place and stead of the said Charles James Elphinstone, deceased.

An affidavit was filed in support of the motion by the solicitor of the said Charles James Elphinstone, the original promoter, stating, that the representatives of the said Charles James Elphinstone were unwilling themselves to continue the suit, and that it was their desire that the said Hebbert should be substituted as promoter in the place of the said Charles James Elphinstone, deceased.

Mr. A. J. Stephens and Dr. Tristram in support of the motion.—It is necessary for the prosecution of this appeal that a promoter of the office of the judge should be substituted in the place of the original promoter. The proceedings have abated by the death of the promoter. It is the duty of all Courts before which proceedings of a criminal character are pending to substitute a fit person to carry on such proceedings. This has been laid down in purely criminal proceedings, where the prosecutor dies pending the

proceedings—*Chitty's Criminal Law* (1), *Regina v. Ellers* (2), *Regina v. Quayle* (3). These proceedings were in the nature of criminal proceedings. The practice must, therefore, be the same as in proceedings in which the Crown is the prosecutor. This is not a question for the discretion of those before whom proceedings are pending. Any person interested may require *debito justitie* to be allowed to continue the suit. The case of *Sherwood v. Ray* (4), relied upon by the respondent, is no doubt an authority that the question whether the office of the judge should be promoted is a matter for the discretion of the bishop; but the bishop has exercised discretion and has sanctioned proceedings. The case of *Sherwood v. Ray* (4) was decided previous to the passing of the Church Discipline Act. *Regina v. The Archbishop of Canterbury* (5) is an authority that the bishop having exercised his discretion and permitted his office to be promoted, cannot afterwards refuse to allow his office to be further continued. In this case, however, the bishop thought the suit ought to be instituted, and that the original promoter was a proper person to promote the proceedings. Proceedings having been permitted by the bishop, it was not competent for him to withdraw his assent; besides the proceedings are now before this tribunal; at all events it is a matter for the discretion of this committee. The applicant is a proper person to continue the proceedings.

(They referred to a collection of *Ecclesiastical Appeals* by Mr. Rothery; *Ayliffes Parergon*, *The Dean of Jersey v. The Rector of —* (6), *Liddell v. Beal* (7), *Sumner v. Wix* (8), *Cousin's Ecclesiastical Law*.)

*The Solicitor General* (Sir J. Coleridge) and Mr. Charles for the respondent.—The suit was finally determined by the death of the promoter. No doubt the suit may be revived by the substitution of another person to promote the office of

(1) Vol. I. p. 182.

(2) 1 Wils. 222.

(3) 9 Dow. 548.

(4) 1 Moore P.C. 397.

(5) 6 E. & B. 546; s. c. 25 Law J. Rep. (N.S.) Q.B. 346.

(6) 3 Moore P.C. 229.

(7) 14 Moore P.C.

(8) 3 Add. Ecc. Rep. 96.

the judge; but it cannot be contended that the applicant or any other person is entitled to be substituted "*debito justitie*," as contended by the counsel for the applicant; on the contrary we contend that the suit ought to be finally determined by the decease of the original promotor. The applicant is a perfect stranger to the suit. He cannot be said to have any *locus standi* whatever. The present bishop is a total stranger to the suit. It may be that the present bishop might decline to allow the office of the judge to be promoted in this suit, and even if the present ordinary thought fit to sanction the proceedings, he might not consider the present applicant a proper person to promote the suit. It might be contended that the executors of a promotor ought to be allowed to come in and proceed in the suit, because there is no other way of obtaining costs for the estate of the original promotor. It is said that this is a criminal proceeding, and that by analogy to proceedings in which the Crown is the prosecutor, the suit ought to be continued notwithstanding the death of the promotor. The proceedings under the Church Discipline Act are only criminal in their consequences to the person charged. The public are not directly interested in the prosecution. The office of the judge does not appear on the record. Whenever a person is separately authorised in the first instance to take proceedings, those proceedings must terminate on the death of the person authorised. The argument upon the merits in this case is clearly against this application. The respondent's chapel is a mere proprietary chapel. It is not a parish church or a chapel of ease. The applicant is only a volunteer. He need not attend the services of the respondent.

*Mr. Stephens* in reply.

*Cur. adv. vult.*

SIR ROBERT PHILLIMORE delivered the judgment of their Lordships.

This was a cause of the office of the Judge promoted by Colonel Charles James Elphinstone, a parishioner of Brighton, against the Rev. John Purchas, perpetual curate of the chapel of St. James in that borough. The Lord Bishop of Chichester

sent the case, in the first instance, by letters of request, to be tried in the Court of Arches. Mr. Purchas was charged with having offended against the laws ecclesiastical by the use of certain rites and ceremonies which were set forth in the criminal articles exhibited against him. Mr. Purchas did not appear in that Court, and the cause was heard *in pœnam*. The Dean of the Arches pronounced that Mr. Purchas had offended against the law with respect to some of the charges, admonished him to abstain from the use of certain rites and ceremonies which were the subject of those charges, decreed a monition to issue against him, and condemned him in the costs incurred by the proof of those charges. But with respect to the charges contained in other articles, the Court held that they were not proved, and declined to admonish Mr. Purchas, or issue any monition with respect to them.

From this sentence the promotor appealed on the 16th of February, 1870; and, having extracted the usual inhibition and citation, served them on Mr. Purchas on the 26th of February, and on the Registrar of the Arches Court on the 28th of February.

On the 22nd of March the inhibition and citation were returned, and the Process of the Arches Court was filed in the registry of this Court. On the 30th of March the promotor died.

On the 20th of April Mr. Henry Hebbert, a parishioner of Brighton, executed a proxy authorizing the proctors of the late promotor to carry on the proceedings in his name and on his behalf; and they now pray their Lordships that Mr. Hebbert may be admitted and substituted as a promotor in the place of the late Charles James Elphinstone.

Mr. Purchas, being served with a notice of this motion, has appeared by counsel before their Lordships and contended that the suit was determined by the death of the promotor and ought not to be revived, and that Mr. Hebbert ought not to be substituted as a promotor.

It was admitted, on the one hand, by the prayer of Mr. Hebbert, what indeed could not be disputed, that the criminal suit had abated by the death of the pro-

moter ; and it was admitted, on the other hand, by the counsel for Mr. Purchas, that the suit could be revived by the substitution of a promoter of a particular character. The principal question which has arisen for their Lordships' consideration is, whether the substituted promoter must be clothed with that particular character, or whether it be not *ex debito justitiæ* to admit any proper person who applies to the Court for permission to carry on the suit ; and, if this be so, there remains the subordinate question whether Mr. Hebbert be a proper person.

In order to give a satisfactory answer to the first question, it becomes necessary to make some observations as to the nature of the suit. All criminal proceedings in the Ecclesiastical Courts are carried on in a certain sense by the exercise of the office of the Judge : it may be exercised in two ways by the Ordinary—that is, by the Judge himself, *ex officio mero*, or by the Judge at the instance of another party, *ex officio promoto*. The proceedings in this case belong to the latter category.

It was decided by their Lordships in the case of *Sherwood v. Ray* (4), which was one of great importance, and very carefully considered by the eminent judges who sat upon it, among whom was Sir John Nicholl, perfectly acquainted with the practice of the Ecclesiastical Courts, that the promotion of the office of the Judge, though generally permitted as a matter of course, cannot be demanded *ex debito justitiæ*.

Subsequently to this decision, the statute 3 and 4 Vict. c. 87, was passed. By the 13th section it was enacted "that it shall be lawful for the bishop, if he shall think fit," either to issue a commission of inquiry, or, in the first instance, to send the case by letters of request to the Superior Court.

In the case of *Regina v. Archbishop of Canterbury* (5), the Queen's Bench held that, when the bishop had once issued a commission at the instance of a promoter, the bishop could not refuse to allow his office to be further promoted.

In the case of *Regina v. Bishop of Chester* (9), the Queen's Bench refused to

compel by mandamus the issue of a commission of inquiry, at the instance of a person who was unconnected with the parish or diocese ; and Mr. Justice Wightman expressed a strong opinion that, under the general law, and under the words of the statute, the bishop had an absolute discretion to allow or refuse his office to be promoted in the first instance.

In the present instance, however, it appears that the local Ordinary, the Bishop of Chichester, thought both that the cause was one which, on the ground of public interest, ought to be instituted, and also that a proper person had applied for leave to promote the office of Judge. He, moreover, availed himself of the provision of the statute to send the case by letters of request to be tried in the superior court of the province.

Having taken this course, it was not competent to his Lordship, according to the decision to which we have referred, to stay or prevent the further prosecution of the suit. The Court of the province had alone jurisdiction over the matter, while the trial was pending before it ; and this Appellate Court having duly inhibited the Court below, and duly cited the defendant to appear before it, has now exclusive jurisdiction over the suit. To this Court, therefore, the application has been properly made.

The precedents on the subject are not numerous ; they are principally furnished from the records of the Court of Delegates, whose authority has been transferred to this tribunal. It was not the habit of the Delegates to deliver reasons for their judgment ; and there are no printed reports of the cases which they decided, or of the arguments of counsel which were addressed to them. It is, however, to be collected from the records with which their Lordships have been furnished by the industry and research of the registrar of ecclesiastical and maritime appeals, that suits which have abated by reason of the death of the promoter have been revived by the appointment of a new promoter in several cases in which the promoter was respondent and died pending the appeal. In these cases the executor of the original promoter appears to have been substituted as a new promoter, on the ground

probably of his having an interest in the costs which the testator promotor had obtained by the judgment appealed from; and on the same principle the executors of the promotor have been allowed to take out a monition to enforce a decree for costs already obtained.

There are also cases, both in the Delegates and in the Court of Arches, in which an appellant promotor, who was an official person, a churchwarden in one case and a mayor in the other, having died pending the appeal, a new official promotor was appointed by the Court. It is true that in the year 1781, on an appeal from the Consistory of York before the Delegates, the promotor having died pending the appeal, the Delegates assigned the cause for hearing (*ad informandum in jure*) on the legal question, "whether by law the office of the Ordinary has not such a concern in all prosecutions of a spiritual nature that a proper promotor may be permitted on any emergency to carry on the cause either in the first instance or the appeal?" Eventually they dismissed the appeal, but on the special ground that the promotor had died before the inhibition and citation were returned; in other words, the jurisdiction of the Court appealed from remained, and the jurisdiction of the Appellate Court was never founded, as it has been in the case which is being now considered.

Their Lordships are unable to discover any sound distinction in principle between these precedents and the case which is now before us. There seems no good ground for the proposition that the power of the Court to appoint a new promotor is limited to the two categories of a deceased promotor whose representative has a pecuniary interest, or of a deceased promotor who was clothed with an official character.

The cases of *the Dean of Jersey v. the Rector of*—(6), and *Liddell v. Beal* (7), decided in this Court, and that of *Sumner v. Wix* (8), decided in the Court of Arches, though in some respects distinguishable from the present, tend to support the principle of the substitution of a new promotor where the former one has died during the progress of the suit.

Criminal ecclesiastical suits ought not to be, and, it must be presumed, would not be allowed to be instituted in the first instance by the Ordinary, who has full control *in limine* over the subject, unless the public interest requires their institution. But it would be a great evil if, after the due institution, under proper authority, of such suits, the course of justice with respect to them could be arrested on any technical or formal ground.

If this were the legal doctrine, an immoral or heretical clerk in holy orders might escape a sentence against him which the welfare of the Church demanded, because the promotor of the office, happening to be a private person, had died before the cause was tried. We are satisfied that such a doctrine is contrary to the analogy to be derived from other systems of law in this country, and is not founded on the practice or principle of ecclesiastical law, when thoroughly examined and properly understood.

We are of opinion, therefore, that it is the duty of the Court before which proceedings are pending when the promotor dies, to allow a proper promotor to be substituted in his place.

The subordinate question only remains, whether Mr. Hebbert, who is proposed as the new promotor, be a proper person to discharge that office.

In deciding this point we are not embarrassed by the consideration whether the personal representative of Colonel Elphinstone might not have a prior claim, if he desired it, to this office. No such personal representative is before us, or has made any application to this Court. Indeed, it would appear that he has no intention of doing so.

It appears to their Lordships that Mr. Hebbert, a parishioner of Brighton, is a proper person to be substituted as a promotor in this case. And they will humbly tender to Her Majesty, in a proper form, their advice to this effect.

Proctors—Moore & Currey, for appellant;  
Brooks & Co., for respondent.

# INDEX

## TO THE REPORTS OF CASES

### DECIDED IN THE

## ECCLESIASTICAL COURTS.

MICHAELMAS TERM, 1869, TO MICHAELMAS TERM, 1870.

**ABATEMENT OF SUIT**—*office of Judge voluntarily promoted by Bishop of diocese: resignation of see by Bishop: amendment of title*—The Bishop of the diocese in which the accused clerk held preferment sent the cause in the first instance, by letters of request, to the Court of Arches. The Court accepted the letters of request, and issued a decree calling upon the defendant to appear. The defendant appeared, and after the articles had been brought in and admitted, the Bishop, who was the promoter of the cause, resigned his see:—*Held*, that the cause had not abated by reason of such resignation, and leave was granted to amend the title of the cause by altering the designation of the promoter. *The Bishop of Winchester v. Wix*, 22

**ARTICLES**—*charging heresy by contravening the formularies of the Church and the homilies*—Articles exhibited against a clergyman for maintaining, &c., doctrine contrary to that of the Church of England, after charging that the doctrine complained of was contrary to certain Articles of Religion, and certain parts of the Book of Common Prayer and of the Homilies, set out the particular Articles and portions of the Prayer Book, and proceeded as follows: "the doctrines, positions, or teachings, declared and taught in which said Articles of Religion, parts of the Book of Common Prayer, and Formularies of the said Church, are also more largely expressed in the godly and wholesome doctrine necessary for these times, contained in the following passages from the 1st and 2nd Book of the Homilies, namely, &c.":—*Held*, that the articles might be admitted to proof in the above form. *Noble v. Voysey*, 21

— See Letters of Request.  
NEW SERIES, 39.—ECCLES.

**CHURCH DISCIPLINE ACT.** See Doctrine. Letters of Request. Monition. Rites and Ceremonies.

**CLERGY**—Conduct during celebration of Holy Communion. See Monition.

**DOCTRINE**—*of the Holy Eucharist: real presence: Eucharistic sacrifice: adoration*—The doctrine of a visible presence of our Lord in the Holy Eucharist is at variance with all the formularies of the Church of England upon the subject, at variance with the language of the service of the Holy Communion, of the 28th Article of Religion, and of the Catechism; but to describe the mode of presence as "objective, real, actual, and spiritual" is not contrary to the law. *Sheppard v. Bennett*, 68

It is lawful for a clergyman to speak in some sense of the "Eucharistic Sacrifice," and therefore in some sense also of the "sacrifice offered by the priest," and the "sacrificial character" of the holy table. And where, when treating of the doctrine of sacrifice, a clerk in holy orders used language which was consistent with the doctrine of a sacrament of commemoration, and did not necessarily imply a sacrifice of propitiation, it was held that he had not exceeded the liberty of expression which the law allows upon the subject. *Ibid*.

The adoration of the spiritual presence of Christ in the Eucharist may lawfully be maintained. And a clerk in holy orders does not contravene the law of the Church in thus speaking of the Eucharist: "Who myself adore and teach the people to adore Christ present in the sacrament, under the form of bread and wine, believing that under their veil is the sacred body and blood of my Lord and Saviour Jesus Christ." *Ibid*.

**HOMILIES**—Contravening. See Articles.

**LETTERS OF REQUEST—jurisdiction of Arches Court: articles: additional charge of heresy not specified in the letters of citation**—In a proceeding under the Church Discipline Act against a clerk in holy orders, for publishing and maintaining certain heretical doctrines, a commission issued and reported that there was sufficient *prima facie* ground for further inquiry. The Bishop of the diocese in which the defendant held preferment sent the case by letters of request to the Court of Arches. The letters of request recited the proceedings before the Commissioners, and set out several extracts from works published by the defendant which in substance comprised the heretical doctrine which he was charged with maintaining, namely, "The actual presence of Our Lord in the Sacrament of the Lord's Supper; the visible presence of Our Lord upon the Altar or Table of the Holy Communion; that there is a sacrifice at the time of the celebration of the Eucharist; and that adoration or worship is due to the consecrated elements of the Lord's Supper." A citation (limited to the charges set forth in the letters of request) having being served upon the defendant, the promoter brought in articles which in addition to the charges which had been the subject of inquiry before the Commissioners, further charged the defendant with maintaining and promulgating the heretical doctrine, "that the wicked eat the Body of Christ in the use of the Lord's Supper":—*Held*, firstly, that the jurisdiction of the Court was founded on and limited by the charges laid before the Commissioners, and that it had no authority to deal with any charges which were not laid before them. Secondly, that the charge of maintaining the doctrine of the "reception by the wicked" was a distinct and separate charge; and as such charge had not been preferred before the Commissioners, nor specified in the letters of request or citation, the articles were ordered to be reformed by striking out all that related to it. *Sheppard v. Bennett*, 1

And on appeal to the Privy Council, it was held that the Commission is a preliminary step for the purpose of advising the bishop whether there is a *prima facie* case; that the letters of request are for the purpose of founding jurisdiction in the higher Court. That the citation must state generically the offence charged so that the accused may know the nature of the offence he is called upon to answer, and that the citation was sufficient to enable the promoter to introduce into the articles a charge of impugning the 29th Article of religion.

Also that when in support of a charge of heresy, articles filed in the Arches Court set out passages from the works of the accused, in which he expressed approval of the works of certain other writers alleged to contain heretical doctrine, the articles must set forth passages from the works of the accused in which he has maintained heretical doctrine; that it is not sufficient to set out passages in which the accused has expressed a general approval of other works, but

which he has not approved in their totality. *Sheppard v. Bennett* (P.C.), 59

**MONITION—disobedience to: elevation of cup and paten and kneeling or prostration during Holy Communion**—On appeal from the Arches Court in a proceeding under the Church Discipline Act, the respondent, a clerk in orders, was monished to abstain from the elevation of the cup and paten, during the administration of the Holy Communion, and from kneeling or prostrating himself before the consecrated elements during the prayer of consecration. On a motion to enforce obedience to such monition, it appeared that the sentence of the Arches Court, which was affirmed by the Judicial Committee of the Privy Council, monished the respondent not to elevate the elements "above the head of the respondent," and that the respondent had literally obeyed that monition. Their Lordships intimated, that any elevation as distinguished from the mere act of removing the elements from the table, and taking them into the hands of the minister, is not sanctioned by law. *Martin v. Mackonochie* (P.C.), 11

It further appeared, that the respondent bowed one knee at certain parts of the prayer of consecration, to an extent that it, occasionally, touched the ground:—*Held*, that such a bowing of the knee was a breach of the monition, and that it is not necessary that a person should touch the ground, in order to perform an act of reverence. *Ibid*.

**PRACTICE—death of promoter of proceedings under Church Discipline Act**—In a proceeding under the Church Discipline Act at the suit of a promoter, judgment was given in the Arches Court, and the promoter appealed to Her Majesty in Council. After the appeal was filed and before hearing, the promoter died. On motion to substitute a parishioner in the place of the original promoter:—*Held*, that it is the duty of the Court before which proceedings are pending, when a promoter dies, to allow a proper promoter to be substituted in the place of the original promoter. *Elphinstone v. Purchas*, P.C. 124

**RITES AND CEREMONIES—"gospel lights": use of lighted candles on "re-table" during celebration of Holy Communion: incense**—In a proceeding under the Church Discipline Act, the defendant, a clerk in orders, was charged with having caused or permitted two lighted candles to be held, one on each side of the priest, when reading the Gospel, such lighted candles not being then required for the purpose of giving light:—*Held*, an addition to the rites or ceremonies prescribed by the law, and therefore unlawful. *Sumner v. Wix*, 25

It was proved in a proceeding under the Church Discipline Act, that the defendant, a clerk in orders, during the celebration of the Holy Communion, used lighted candles which were placed on a "re-table," being a piece of furniture dis-



tinct from and standing behind the Holy Table, when such lighted candles were not wanted for the purpose of giving light; and that he also used incense for censuring persons and things immediately before and after the celebration of the Eucharist:—*Held*, that the use of the lighted candles was illegal, whether regarded as falling under the category of "ceremonies" or "ornamenta;" and that the use of the incense was also unlawful, as being subsidiary and

preparatory to the celebration of the Holy Communion. *Ibid*.

**RUBRICS**—Construction of, as to the use of vestments, the mixing water with the wine, and the use of wafer bread in the administration of the Holy Communion. *Elphinstone v. Purchas*, 28

**SIMONY**—Practice as to production of title deed in criminal suit where no issue given in by defendant. *Lee v. Merest*, 53

---

## TABLE OF CASES.

---

*Elphinstone v. Purchas*, 28 (P.C.) 124

*Lee v. Merest*, 53

*Martin v. Mackonochie* (P.C.) 11

*Noble v. Voysey*, 21

*Sheppard v. Bennett*, 1, 68 (P.C.) 69

*Sumner v. Wix*, 25

*Winchester, Bishop of, v. Wix*, 22

---

PRINTED BY SPOTTISWOODE & Co.

New-street Square ; 29 Chancery Lane ; 30 Parliament Street ; 38 Royal Exchange.

THE  
**LAW JOURNAL REPORTS**

FOR  
THE YEAR 1870:

**CASES**  
DECIDED IN THE  
**High Court of Admiralty,**

REPORTED BY  
**ROBERT ALBION PRITCHARD, Esq., D.C.L., BARRISTER-AT-LAW;**

AND ON APPEAL THEREFROM

TO THE  
**Privy Council,**

REPORTED BY  
**EDWARD BULLOCK, Esq. BARRISTER-AT-LAW.**

---

**MICHAELMAS TERM, 1869, TO MICHAELMAS TERM, 1870.**

---

**ADMIRALTY.**  
**NEW SERIES, VOL. XXXIX.**

---

**LONDON:**  
PRINTED BY SPOTTISWOODE AND CO. NEW-STREET SQUARE.  
PUBLISHED BY EDWARD BRET INCE, 5, QUALITY COURT, CHANCERY LANE.

---

**MDCCCLXX.**



# CASES ARGUED AND DETERMINED

IN THE

## High Court of Admiralty,

AND IN THE PRIVY COUNCIL ON APPEALS FROM THAT COURT ;

COMMENCING WITH

MICHAELMAS TERM, 33 VICTORIÆ.

---

1869. }  
Nov. 3, 9. } THE YOUNG JAMES.

*County Court Jurisdiction—Costs—31 & 32 Vict. c. 71. s. 9—Damage exceeding 300l.—Limited liability less than 300l.*

*A vessel was arrested in the Court of Admiralty, in a cause of damage for losses exceeding 300l. The defendants admitted their liability, and paid into Court 252l., the amount of their statutory liability at 8l. per ton :—Held, that the plaintiffs were entitled to the costs of proceeding in the Admiralty Court.*

This was a cause of damage by the owners of a vessel called the *Redjacket*, against the owners of the *Young James*. The defendants paid into Court 252l., the amount of their statutory liability at 8l. per ton. The plaintiffs had accepted this tender, reserving the question of costs, and now moved the Court to decree that the money be paid out to them, with costs, and to give them a certificate under section 9 of the County Court Admiralty Jurisdiction Act, 1868, 31 & 32 Vict. c. 71, if one was necessary to entitle them to costs. The action was originally commenced in the sum of 1,000l., and it was admitted that the plaintiffs' actual loss exceeded 300l., which is the limit of the

NEW SERIES, 39.—ADMIRALTY.

jurisdiction of the County Court. The section above referred to enacts that, "If any person shall take any proceedings in the Court of Admiralty which he might have taken in a County Court, and shall not recover a sum exceeding the amount to which the jurisdiction of the County Court is limited, he shall not be entitled to costs, unless the judge of the Court of Admiralty, or of a Superior Court before whom the cause is tried or heard, certifies it was proper to be tried in the Court of Admiralty or Superior Court."

*E. C. Clarkson* for the plaintiffs.—The plaintiffs' claim exceeded the amount over which the County Court had jurisdiction, and had they brought their action in a County Court they would have been estopped from getting more than the amount for which they could have entered their action. They were entitled to sue for the whole amount of damage; it was for the defendants to prove the value of their ship and their right to limited liability, and they could do so only in this Court.

*E. G. Gibson*.—The true construction of the section is that the sum recovered is the test to determine whether proceedings might have been taken in a County Court, and this has always been held to be the rule in construing similar

B

enactments—*Woodhams v. Newman* (1), *Emery v. Binns* (2). Otherwise a plaintiff would only have to exaggerate his claim in order to oust the jurisdiction of the inferior Court. The plaintiffs' legal claim has never exceeded the sum to which alone they now admit they are entitled; and as the Court has not heard the case, or tried it, it has no power to grant a certificate, and the circumstances do not entitle the plaintiffs to have one—*Waylett v. Wyndham* (3).

*E. C. Clarkson* in reply.

*Cur. adv. vult.*

SIR R. J. PHILLIMORE (on Nov. 9, after stating the facts) said.—These proceedings might, it is argued, have been taken in a County Court, and therefore the plaintiffs are not entitled to costs, and are liable to be condemned in costs; and it is further contended that it is not competent to the Court to certify for costs in this case, inasmuch as the cause has not been “tried or heard.”

Upon the first question, I was referred to an analogous enactment as to costs contained in the 129th section of 9 & 10 Vict. c. 95, which relates to actions for small debts brought in the Superior Courts; and there the words are, “for which a plaint might have been entered, etc.,” and for the construction of these words I was referred to two cases, *Woodhams v. Newman* (1); and *Emery v. Binns* (2), on the interpretation of a similar clause in a Jamaica Act. I entirely assent to the principle of both these decisions, which is in effect that the words, “for which a plaint might have been entered,” must refer to an amount justly or properly claimed, and that it is not competent to a plaintiff to release himself from the restraint of the Act, by entering an exorbitant claim, and so ousting the jurisdiction of the County Court, and then, after the claim has been so ousted, reducing the amount to a sum which, if it had

been originally claimed, would have brought it within the jurisdiction of the County Court. But it was contended on behalf of the plaintiffs by Mr. Clarkson, in a clear and able argument, that neither the words of the statute nor the principle of these cases were hostile to the claim of his client,—not the words of the statute, because in this case the proceedings might not have been taken in a County Court, inasmuch as the damage done to the *Redjacket* amounted to 800*l.*, and by the Common Law the *Young James* was liable for that sum; the amount of claim, therefore, exceeded the jurisdiction of the County Court.

After the suit was instituted in this Court, however, the defendants availed themselves of the provision contained in the 34th section of 25 & 26 Vict. c. 63 (the Merchant Shipping Act Amendment Act, 1862), and limited their liability to 8*l.* per ton, in order to do which it was necessary, according to the practice of this Court, that they should make an affidavit that the damage had occurred without the actual fault or privity of the owners, so as to bring them within the protection of the Act; and it was not till after this limitation of liability had been claimed, which limitation could not in this case have been claimed in the County Court, that the claim was reduced below the amount of 300*l.*; and in fact it is analogous to the case of a demand reduced by a set-off, to which it was held, in *Woodhams v. Newman* (1), the statute did not apply. In *Emery v. Binns* (2) no question of set-off or of limitation of liability subsequent to the institution of the suit arose.

I am of opinion that this cause was properly instituted in this Court; it becomes, therefore, unnecessary to consider that part of the argument which relates to my inability to certify for costs, inasmuch as the case has not been “heard or tried” before me, and to the authority cited *Waylett v. Wyndham* (3). I pronounce for the prayer of the plaintiffs in this case, including thereby the condemnation of the defendants in costs.

Proctors—Lionel Skipwith, for plaintiffs; H. C. Coote, for defendants.

(1) 7 Com. B. Rep. 654; s. c. 18 Law J. Rep. (N.S.) C.P. 213.

(2) 7 Moore, P.C. 204; and see 9 & 10 Vict. c. 95, s. 129; 13 & 14 Vict. c. 61, s. 11; 15 & 16 Vict. c. 54, s. 4; 23 & 24 Vict. c. 126, s. 34; 30 & 31 Vict. c. 142, s. 5.

(3) 2 Hurl. & C. 982; s. c. 33 Law J. Rep. (N.S.) Exch. 172.

1869. }  
Nov. 13, 23. } THE NORTHUMBRIA.

*Damage—Limitation of Liability—Date from which Interest is to be computed.*

*In all cases of limitation of liability for damage done by any ship, interest will be given upon the limited amount from the date of the collision.*

This was a suit by the owners of the steamship *Northumbria*, the wrong-doing vessel, to limit their liability to the amount fixed by statute. The owners of the *Hesperia*, the vessel damaged, and the owners of the cargo on board the *Hesperia*, applied to the Court for costs, and interest upon the limited amount from the time of the collision, and the following questions were raised:—1. Whether any interest should be paid? 2. If so, from what period it should be reckoned?

*Butt and Stevenson* for the plaintiffs.—No interest is payable in matters of collision until the amount of the damages has been assessed. No Court can award damages in cases of tort, except upon the authority of the statute 3 & 4 Will. 4. c. 42, and that statute does not apply to cases of collision at sea; but, even if the statute does apply, interest cannot be awarded, because interest is damages. The 28th section of 3 & 4 Will. 4. c. 42. only deals with actions on matters of contract. The 29th section only refers to cases of tort, and there are but two classes of tort in which interest can be given, viz. trespass in trover and trespass *de bonis asportatis*—*Mayne on Damages*, 69; i. *Chitty on Pleading*, 412; and see *Sedgwick on Damages*, 443, for the difference between English and American cases. By the Common Law of England, apart from the statute, no Court can give interest. Interest, if payable at all, can only be recovered as damages, and the Merchant Shipping Act Amendment Act, 1862, s. 54, by the words “shall not be answerable in damages,” defines the extent of the liability—*Mayne*, p. 69; *Sedgwick*, 433, 446. What is the authority for giving damages in this Court? In *The Amalia* (1), Dr. Lushington based his judgment on the

*Dundee* (2). *The Dundee* is no authority in such a case as the *Amalia*. *The Dundee* turns on the statute 53 Geo. 3. c. 159. s. 1. If, however, interest can be given, then the question will arise, from what time it is to be reckoned—*Mayne on Damages*, c. iv. p. 69; *Higgins v. Sargent* (3); i. *Chitty on Pleading*, 412. The decision in *The Amalia* is that limited liability has nothing to do with the question of interest, and that interest is not payable from the date of the collision, but from the time when the ship would, in all probability, have arrived at her port of destination—*Nixon v. Roberts* (4), *Straker v. Hartland* (5).

Even if the interest is payable for the ship there can be no interest upon freight, which is interest upon the ship-owner's capital—the ship. Interest upon interest cannot be paid—*Attwood v. Taylor* (6). In *The Amalia* (2) and *Straker v. Hartland* (5) there was delay, in this case there was none—*The Minna* (7). In equity the defendants are not damaged by the non-payment of money into Court; because it is the practice not to pay interest upon money paid into Court. The owners of cargo are paid by bills at three or four months' date, which could be discounted; and in the ordinary course they would get no money until the ship arrived at her port of destination.

*E. O. Clarkson* for the ship.—The question is not as to the practice at Common Law, but what has been done in this Court. In every case in this Court interest has been given from the date of collision, when it has been demanded. The practice of the Court proceeds out of the nature of the suit, and interest springs from the lien which comes into existence at the moment of the collision—*Harmar v. Bell* (8), *The Dundee* (3); *The General Iron Screw Colliery Company v. Schurmanns* (9); *The*

(2) 2 Hag. Adm. 137.

(3) 2 B. & C. 348.

(4) 1 Jo. & H. 789; s. c. 30 Law J. Rep. (n.s.) Chanc. 844.

(5) 2 Hem. & M. 570; s. c. 34 Law J. Rep. (n.s.) Chanc. 122.

(6) 1 Mac. & G. 279.

(7) Law Rep. 2 Adm. 97.

(8) 7 Moore, P.C. 267.

(9) 1 Jo. & H. 180; s. c. 29 Law J. Rep. (n.s.) Chanc. 879.

(1) 34 Law J. Rep. (n.s.) Adm. 21.

*African Steamship Company v. Swanzy* (10); *The Bold Buccleugh* (11); *Nixon v. Roberts* (12). It is true that the Acts limiting the liability do not give damages in express terms, but they do not withhold them; and the legislature, when the last acts were passed, must have been aware that interest had been given in the Courts of Chancery and in this Court. Some interest is therefore payable. But from what date? Ordinarily from the end of the voyage; but that is because the freight is not earned until then. Those are cases not of limited liability but in which the plaintiff gets the whole of his claim. In a suit for limitation the amount for which the wrong-doer is liable does not represent the whole damage but only that for which he is liable. The statutory liability is at once due, and ought to be paid at the moment of the collision, from which time the interest on the limited amount should be paid—*Spirit of the Ocean* (13). The duration of the voyage has nothing to do with regard to the effects of the passengers or crew; and the owners of cargo lose the use of the cargo from the time of the collision; interest is given in the Courts of Chancery from the date of the collision—*Saemy v. Briggs*; and *Bustin v. Glaesbrook* (14).

*Gainsford Bruce* for the owners of cargo. —The Common Law is always very restricted in the payment of interest—*Lindley's translation of Thibaut*, s. 171. Interest is payable in every case of delay—*Eagleton v. East India Company* (15); *The Tyne Commissioners v. The General Steam Navigation Company* (16). Interest is a claim of damage for not getting the *£l.* per ton at the moment of the collision, when the wrong was done. But even if the ship should get interest only from the date of her probable arrival at her port of destination this rule cannot apply to the owners of cargo.

*Cur. adv. vult.*

(10) 2 Kay & J. 664; s. c. 25 Law J. Rep. (N.S.) Chanc. 870.

(11) 7 Moore P.C. 267.

(12) 1 Jo. & H. 739; s. c. 30 Law J. Rep. (N.S.) Chanc. 844.

(13) 34 Law J. Rep. (N.S.) Prob. M. & A. 74.

(14) 1867, 1869, Stuart, V.C., not reported.

(15) 3 Bos. & P. 55.

(16) Exch. not reported.

SIR R. J. PHILLIMORE (on Nov. 23):—It is not disputed that the practice of this Court has been invariable as to allowing interest; but it is contended that this practice is erroneous, at variance with the Common Law, both before and since the passing of the statute 3 & 4 Will. 4. c. 42, and, moreover, opposed to the enactments of 25 & 26 Vict. c. 63 (Merchant Shipping Act Amendment Act, 1862). I was referred to the case of *Higgins v. Sargeant* (1), and to *Chitty on Pleading*, to shew that, with certain exceptions, no interest was allowed at Common Law in cases of contract nor in cases of tort; and that it was not until the passing of 3 & 4 Will. 4. c. 42, (an Act for the further Amendment of the Law and the better advancement of Justice,) that in certain actions the jury could give damages in the nature of interest (s. 29), and that in these instances the wrong-doer had not destroyed but taken possession of the goods, and, therefore, the legislature allowed interest to be recovered.

If it were necessary to examine this proposition I should find it difficult to reconcile it with the recent case of *The British Columbia Saw Mill Company v. Nettleship* (17). But it appears to me quite a sufficient answer to these authorities to say, that the Admiralty Court, in the exercise of an equitable jurisdiction, has proceeded upon another and a different principle from that on which the Common Law authorities appear to be founded. The principle adopted by the Admiralty Court has been that of the civil law,—that interest was always due to the obligee, when payment was not made *ex mora* of the obligor, and that whether the obligation arose *ex contractu* or *ex delicto*. The American common law has been more liberal than the English. Mr. Sedgwick in his work on *Damages* (4th edition), p. 443, remarks, "There is considerable conflict and contradiction between the English and American cases on this subject. But, as a general thing, it may be said that while the tribunals of the former country restrict themselves generally to those cases where an agreement to pay interest can be proved or inferred, the courts of the

(17) 37 Law J. Rep. (N.S.) C.P. 235.



United States, on the other hand, have shewn themselves more liberally disposed, making the allowance of interest more nearly to depend on the equity of the case, and not requiring either an express or implied promise to sustain the claim." I have now to consider whether the practice of this Court has been affected on this point by the limitation of liability Acts. In the case of *The Dundee* (3), Lord Stowell decided that the statute 53 Geo. 3. c. 159. s. 1, limiting the liability of owners to the value of the ship, and appurtenances and freight, applies only to the original claim for damage, and does not extend to costs and interest. The words of the statute on which Lord Stowell gave his decision were substantially, and for the purposes of this case, the same as those of 25 & 26 Vict. c. 63 (the statute invoked on this occasion) unless the words in the 54th section, "shall not be answerable in damages" (which are identical with those of 17 & 18 Vict. c. 104. s. 504) constitute a difference. The contention is, that interest is part of the damages, and that therefore the Court is precluded by the statute from giving it, in addition to the statutory limitation of 8l. per ton. The answer to this contention appears to me conclusive. First, if it were necessary, I should be inclined to dispute the proposition; but, in truth, the application of it is at variance both with the decided cases in the Court of Chancery as well as in the Court of Admiralty, and with the principle on which they are founded; that principle being that the lien attaches from the moment when the injury has been inflicted — *The Bold Buccleugh* (11).

The cases in the Court of Chancery of *The African Steamship Company v. Swanzy* (10), *The General Iron Screw Colliery Company v. Schurmanns* (9), and *Nixon v. Roberts* (12) were decided upon the provisions of 17 & 18 Vict. c. 104. s. 504, and I think it was well remarked by Mr. Clarkson that the legislature, when it passed the subsequent and last Merchant Shipping Act, must be taken to have been aware of these decisions; and in this last Merchant Shipping Act the words of the former act, "shall not be answerable for damages," are repeated, without any provision that

they shall be deemed to include interest. The cases under this last act are *Straker v. Hartland* (5), in the Court of Chancery, and *The Amalia* (2), in the Court of Admiralty, the best report of which appears to be contained in a note at p. 164 of 5 New Rep. In all these cases in the Court of Chancery it is to be observed that they have avowedly followed the practice of the Court of Admiralty.

I arrive, therefore, without hesitation at the conclusion that, notwithstanding the statutes of limitation, some interest is payable on the limited amount, and I entirely agree with the observations of Wood, V.C., in *Straker v. Hartland* (5): "It was quite clear that justice required that a debt which was due, but the payment of which was delayed, shall carry interest."

The important question remains to be considered, as to which, perhaps, there may be more doubt, namely, the period from which the interest is to be reckoned. In order to arrive at a clear understanding on this point it is necessary to consider the practice under the old law and the practice since the statutes of limitation. The practice under the old law, which decreed a *restitutio in integrum*, by the wrong-doer to the sufferer, was as follows:—In the case of a vessel sunk with a cargo on board, the *restitutio in integrum* was effected by a calculation of the probable value of the ship at the end of her voyage, and of the freight which she would have earned, making at the same time certain deductions as to the expenses which the owner must have incurred in order to complete the voyage, such as the wages of the crew, &c., and also making a deduction for discount, if the value found were paid before the probable end of the voyage; and *converso* giving interest on the value, if not paid at the probable end of the voyage. In the event of the vessel sunk having no cargo, then interest upon the value of the ship from the day of the collision was given, the reason being that, in the former case, by giving freight you had really given the interest on the use of the vessel during the interval between the collision and her arrival in port, whereas in the case of there being no cargo, there was no freight

to represent the interest, and it was therefore expressly given. So that, in the first case, to have given interest as well as freight would have been to place the sufferer in a better position than he would have been but for the collision; and, in the second case, to have refused him interest would be to place him in a worse position on account of the collision than he would otherwise have been in; whereas the principle of *restitutio in integrum* is to replace the sufferer in the condition in which he was at the time when the wrong was done to him.

The question is how are these principles affected by the statutes which limit the liability of the wrong-doer. In these statutes the legislature introduced a new principle, the object of which was to give some protection to the owner against the wrong doing of his servant, the master of the vessel.

They preserved the principle of *restitutio in integrum* in cases where, "with his actual fault and privity," the damage had been inflicted on the sufferer; but, with this exception, they limited his liability for the act of his servant to a certain definite sum. In the latter case, therefore, this limited amount took the place of the *restitutio in integrum*; but the principle still remains that the liability to this amount attaches from the time of the collision; and there seems no reason why interest should not accrue on the delay to pay that limited amount as well as in the case where the amount was unlimited. Indeed, the equity of the thing is the other way; for to refuse this interest would be to diminish still further the natural right of the sufferer to full compensation for the injury which he has sustained. It is to be observed that the sufferer does not, when interest is awarded, obtain interest on the amount of his damage but on the limited amount to which the statute has restricted the liability of the wrong-doer. Therefore, in the case of a vessel without cargo, it is clear that the interest would date from the time when the liability attached, that is, from the moment of the collision. Nor, when the case is examined, does it appear that a different rule ought to apply when the vessel carries cargo. Under the rule of *restitutio in integrum*

the cargo-carrying vessel did not obtain interest from the date of the collision, because she received it in the shape of freight at the port of delivery; but where the amount of the liability is limited, and the sufferer does not receive full compensation, the reason which fixes the date of interest from the port of delivery does not apply. In the case of *The Amalia* (2), Dr. Lushington remarked (18): "Upon what grounds, then, was interest given? Interest was not given by reason of indemnification for the loss, for the loss was the damage which had accrued; but interest was given for this reason, namely, that the loss was not paid at the proper time. If a man is kept out of his money, it is a loss in the common sense of the word, but a loss of a totally different description and clearly to be distinguished from a loss which has occurred by damage done at the moment of a collision." This case was cited as an authority for the opposite opinion, but, in truth, it is not so; the Judge in that case gave all that was prayed; and no decision on this point was involved in his judgment. With respect to some of the earlier cases in Chancery, it would seem, from the form of the decree, that a distinction was taken between vessels with or without cargo, but the point seems never to have been formally raised or adjudicated upon; and in the later cases the practice of the Court of Admiralty appears to have been followed; and that practice, I learn from the Registrar, has for some time been to treat the date of collision as the period from which interest accrues, without discriminating whether the vessel has or has not carried cargo. No such discrimination was attempted to be made either in the case of *The Spirit of the Ocean* (13), or in the more recent case of *The City of Buenos Ayres* (19).

I am of opinion that, in all cases where the liability of the owner is limited, interest should be given upon the limited amount from the date of the collision; and I decree in this case accordingly.

Attorneys—Hillyer & Fenwick, for plaintiffs;  
Lowless & Nelson, for owners of *The Hesperia*;  
Waltons, Bubbs, & Walton, for owners of cargo of  
*The Hesperia*.

(18) 5 New Rep. p. 161.

(19) Not reported.

1869. }  
Nov. 20, 23. } THE HICKMAN.

*Salvage—Award under 300l.—Tender—Certificate for Costs.*

*In a cause of salvage the defendants tendered 282l. together with such costs (if any) as shall be due by law. The Court at the hearing of the cause pronounced for the tender:—Held, that though the amount recovered was less than 300l. the plaintiffs were entitled to costs up to the tender.*

*Held also, that, when a tender is made in a salvage suit, it should state that it is a tender for salvage and costs, or should specify the ground upon which costs are not tendered, and refer the question of costs to the consideration of the Court.*

This was a cause of salvage, in which the defendants had tendered the sum of 282l., "together with such costs (if any) as shall be due by law." The Court pronounced the tender to be sufficient, and took time to consider whether the Court ought to certify for costs, first, because the sum awarded was under 300l.; and secondly, because the Court had pronounced for the sufficiency of the tender.

*Deane and D. G. Gibson* for the plaintiffs.—A sum so nearly approaching to the limit of the County Court jurisdiction had been awarded that the plaintiffs were entitled to receive a certificate. The tender was invalid, because it was conditional as to costs: the ancient rule of the Court being, that a tender of costs was essential in order to make the tender good. Here the defendant was trying to get all the advantages of having tendered costs, and yet retain the right to dispute the plaintiffs' title to them.

*Milward and F. O. Clarkson* for the defendants.—A tender of costs is not essential; the old practice of the Court was formed prior to the enactments which deprive plaintiffs of the right to costs in certain cases. If defendants could not tender in the form adopted, they would have to consent to give costs in cases where plaintiffs were not entitled to them. The tender sufficiently expressed what was meant, and plaintiffs could not be prejudiced by its terms.

*Cur. adv. vult.*

SIR R. J. PHILLIMORE (on Nov. 23).—This is a case of salvage, in which I pronounced the tender, or, rather, the two tenders taken together, to be sufficient. They amounted to the sum of 282l. Two questions were reserved for the further consideration of the Court—first, whether, the sum awarded being under 300l., the Court having regard to sections 3 and 9 of 31 & 32 Vict., c. 71 (the County Courts Admiralty Jurisdiction Act), ought to certify for costs. I have considered all the circumstances of this case, and especially, though not solely, the small difference between the sum awarded and that which limits the jurisdiction of the County Court, and I am of opinion that I ought to certify for costs.

The second question is whether, although the suit has been properly instituted in this court, the plaintiffs ought to have their costs, inasmuch as I have pronounced for the sufficiency of the tender. The form of the tender was as follows: "Take notice, that we have this day paid to the account of the Registrar at the Bank of England the sum of 282l., which we tender, together with such costs (if any) as may be due by law." Cases were cited to me with respect to the Chancery and Common Law Courts on questions of tender, but I cannot consider them as furnishing precedents for the practice of this Court. Various cases on the subject of tender decided in this Court were also referred to in the course of the argument. They will all be found collected in chap. v. of *Williams & Bruce's Admiralty Practice*, which also contains in the notes some valuable remarks upon the principle of tender in this Court. The first decision of any importance is that laid down by Lord Stowell in *The Vrow Margaretta* (1). The rule which Lord Stowell intended to lay down in that case was that the parties ought to know "what is proposed to them for their reward, and what for costs," and that, inasmuch as verbal offers had led to misunderstanding and uncertainty, a more regular and legal form should be adopted for the future. Since that time the matter has been several times discussed before my predecessor in this chair. But, upon the

(1) 4 C. Robin. 107.

whole, I am of opinion that the practice upon this point has been somewhat wavering and uncertain, and I agree with the observations made at the bar, that it is expedient to take this opportunity to lay down a rule on this subject.

With respect to the present case, I am of opinion that it was competent to the defendants to tender the reward for salvage, and reserve the question of costs, and such was clearly the intention of the tender; and I think it would have been competent to the plaintiffs to have accepted the tender, so far as it related to the reward, and to have reserved the question of costs for the consideration of the Court. I shall give the plaintiffs their costs up to the time when the tender was made; but, having regard to the uncertainty as to the practice, and to the correspondence between the solicitors of the parties, which has been put in evidence, I shall make no order as to costs subsequent to the tender, but leave each party to pay his own costs.

For the future I must direct that when a tender is made it shall either state that it is a tender for salvage reward and costs, or it shall specify the ground upon which costs are not tendered, and refer the question of costs to the consideration of the Court.

---

Proctors—H. C. Coote, for plaintiffs;  
Deacon, Son, & Rogers, for defendants.

---

1869. }  
July 7. } THE ORIENT.

*Damage—Responsibility of owners of wrong-doing Vessel for acts of their Agent—Special Defence—Pleading—Costs.*

*In a cause of damage, the plaintiffs alleged the damage to be imputable solely to the acts of the owners of the O. and their servants, which averment the defendants, the owners, traversed. At the hearing it was proved that the damage was caused by one acting not within the scope of his authority from the owners:—Held, that such a defence should have been specifically pleaded, and that, therefore, though the petition was dismissed, the defendants were not entitled to their costs.*

This was a cause of damage, in which the plaintiffs, the owners of a brigantine called the *Georgiana*, sued the brig *Orient* and her owners for damage to the brigantine.

The *Georgiana* put into the port of Bideford to repair, and was beached at a place called Appledore, on the 6th day of April, 1867, and the *Orient* was subsequently moored alongside the *Georgiana* outside of her, with chains and hawsers passed from the bow and stern of the *Orient* and hauled tight, so that as the tide rose the *Georgiana* was on the one side strained by the *Orient*, and on the other chafed and ground by the quay wall. The fourth article of the petition alleged that the damage was imputable solely to the acts of the owners of the *Orient* and their servants.

The defendants, in the first article of the answer, denied the averments in the petition, and in the second article alleged that the plaintiffs had obtained judgment and satisfaction at common law for the same cause of action. To which the plaintiffs replied that they had recovered damages only for the trespass and wrongful detention, and not for the injury to the vessel.

At the hearing it appeared from the evidence that at the time when the *Orient* was placed against the *Georgiana* she had no master or crew, but had been placed there by a person who was not the agent of the owners for any such purpose.

*Deane and Cottingham* for the plaintiffs.—Upon these pleadings it is not competent to the defendants to rely upon this defence. It should have been specifically alleged. The owners of the *Orient* are before the Court, and have only denied that their vessel has done the damage. The objection is in the nature of a protest, and should have been pleaded as such—*The Ida* (1); or at all events, such a defence should have been expressly alleged—*The Thetis* (2).

*Cohen, E. U. Bullen, and Wood Hill*, for the defendants.—The petition distinctly states that “the damage was imputable

(1) 1 Lush. 6.

(2) 38 Law J. Rep. (N.S.) Adm. 42.

solely to the owners of the *Orient* or their servants," and that averment is traversed in the answer.

*Deane* in reply.

(Some discussion ensued as to amendment, and his Lordship reserved his judgment until all the evidence had been given.)

Sir R. J. PHILLIMORE.—This is a case in which the Court has no doubt whatever as to the law which is applicable to it; but it raises a point of some importance with respect to the pleadings in this Court, which will induce me to make some remarks which otherwise would have been unnecessary.

His Lordship then stated the pleadings, and said,—In the course of the trial Mr. Yeo was called for the defendants, when it appeared that he was agent for the owners of the *Orient* for the purpose only of the sale and completion of the vessel; that is, the vessel had been sent from Prince Edward's Island in an incomplete state, and he was to sell it if he could unfinished, and if not, when it was finished; and he said he put the *Orient* into the position in which she did the damage to the *Georgiana* for the purpose of asserting his right to the fore-shore. The counsel for the defendant also put into Court a bill of sale, which shewed that Mr. Yeo was an agent to sell the ship for a sum not less than 2,400*l.* That was the limit and the scope of his agency.

The question then arose whether this case could proceed any further, inasmuch as the act of damage really had been done by a person who, in putting the *Orient* in a position to cause the damage, had acted without the scope and beyond the limit of his authority altogether? and two things appeared to me: first, that I could not refuse either to consider the evidence so taken before me, or the conclusion of law to which that evidence must lead; and, secondly, that the pleadings had not sufficiently raised the first defence intended to be relied upon at the hearing. I then suggested, or I think Mr. Cohen himself suggested, that the answer might be amended, and he proposed the following amendment:—"The aforesaid damage was imputable only to persons who were not

servants of the defendants acting at the time in the service of the defendants, and was not occasioned by any person acting in the service of the defendants." Nothing was said at that time about amending the plea upon condition that the costs were paid; nothing was said about costs. When the Admiralty advocate replied, he said that he could not sustain the suit which his clients had instituted after the evidence which had been given before the Court, and which shewed that the wrong-doer in this case was not the servant of the owners; and he alleged that if this had been brought to his notice in the regular and proper manner, and at an earlier period, he should have advised his clients to discontinue the suit, and the expense of hearing would not have been incurred. Mr. Cohen thereupon retracted his amendment, and contended that by the general denial he had sufficiently raised this specific issue, the *onus probandi* of which was upon the plaintiffs.

There can be no doubt that under the old rules it would have been necessary, not only to state this part of the case, but any other questions which were likely to arise. Those rules were, I think, very properly altered under the authority of the Privy Council. The 65th rule says: "The modes of pleading hitherto used, as well in causes by act on petition as by plea and proof, are hereby abolished," and then the 67th is: "Every pleading shall be divided into short paragraphs numbered consecutively, which shall be called the articles of the pleadings, and shall contain brief statements of the facts material to the issue." And the 76th provides, "Any petition or other pleading may be altered or amended by consent of proctors, or by permission of the Judge." In the case of *The Why Not* (1), I laid down to a certain extent my opinion with regard to pleadings in these cases, and I said, "the rule of pleading ought to be adapted to the nature of the case which it is its object to bring before the Court. They are not to be considered as constituting a game of skill between the advocates, but ought to be so framed as to assist not only the party in the statement of his case, but the Court

(1) 38 Law J. Rep. (N.S.) Adm. 27.

in its investigation of the truth between the litigants." And the pleadings should be such as to apprise the Court, and the opponent, of the principal points upon which the party intends to rely, that neither should be taken by surprise. Of course, I cannot put myself in this case into the position of the advocate for the plaintiff; but I can say truly, that, as far as the Court is concerned, it was entirely taken by surprise when it received the evidence to which I have adverted.

In such a state of things, the Court must not reject the evidence, but should apply it to the general averments of denial, and if necessary, give the other party leave to answer that which is raised so generally in the petition and so specifically by the evidence, and under the special circumstances of this case, I think that defendant was not the agent of the owner for the wrong-doing which caused the collision in question, and I must therefore dismiss the defendants from further observance of justice in this case. It only remains to be considered what it is the duty of the Court to do with respect to the costs.

I am aware that these proceedings have in substance been already instituted before another Court, and that it was quite impossible that the plaintiff could have been ignorant that Mr. Yeo, the person whose evidence was taken, was only an agent for the owners of this vessel, the *Orient*, for the purpose of sale, or may be of completion and then of sale. Nevertheless, I am of opinion that they ought to have had notice of that fact by the pleadings in this cause, and I think I arrive at a fair conclusion when I determine not to reject the evidence and to dismiss this case, and leave each party to pay his own costs.

[*Cohen*.—Do I understand that your lordship declines to decide the legal question entered on the record?

The COURT.—I have no necessity to do so; the preliminary objection is fatal to the suit.

*Cohen*.—Your lordship will allow me leave to appeal if such leave be necessary.

*Deane*.—If my friend is going to appeal on the question of costs, leave would not be necessary.

*Cohen*.—Not on the question of costs,

but I propose to appeal on the question of the judgment.

The COURT.—You have permission to appeal, if permission be necessary.]

Attorneys—R. Peckham for plaintiffs; Field & Sumner, agents for H. Brittan & Son, Bristol, for defendants.

1869. }  
Dec. 7, 21. } THE ORIENT.

*Decree—Error—Amendment.*

*To entitle a party to amend an error in a decree, the mistake should be brought to the notice of the Court with the utmost possible diligence.*

*Application to alter a decree five months after the decree was made, rejected.*

This was a cause of damage, the facts of which are reported in the preceding case, in which the Court made the following decree.

"July 7th, 1869. The judge, having heard counsel on both sides, gave leave to the defendants to amend their answer if they should think fit to do so.

"Counsel for the plaintiffs then consented to the cause being dismissed, and the judge, having heard counsel on both sides on the question of costs, dismissed the defendants and their bail from this cause and all further observance of justice therein, but made no order as to the costs of this cause.

"Defendants' proctors, with permission of the judge, protested of a grievance and of appealing, and instantly appealed."

The defendants appealed from this decree, but before the appeal was heard, and on the 7th day of December, counsel on behalf of the defendants moved the Court to alter the decree as follows, namely, The judge, having heard counsel on both sides, ruled that the pleadings did not raise the defence, that the collision was occasioned by persons who were not servants of the defendants, but gave leave to the defendants to amend their answer if they should think fit so to do. Counsel for the defendants declined so to do, whereupon counsel for the plaintiff consented to the cause being dismissed, but counsel for the defendants prayed the judge before pronouncing judgment to hear and determine the ground of defence raised by the second article of the

answer. The judge, having heard counsel &c., refused to hear and determine the said ground of defence, and dismissed the defendants and their bail.

*Cohen* for the defendants.—The present decree is erroneous, as the defendants at the hearing did not avail themselves of the permission to amend, when that amendment was coupled with the condition of losing the costs of the suit. The defendants had upon their second plea a good defence to the action, and it was therefore unnecessary for them to amend. The decree ought also to state the judgment as to the insufficiency of the first article of the answer to raise the first defence.

*Deane* for the plaintiffs.

*Cur. adv. vult.*

Sir R. J. PHILLIMORE (on Dec. 21).—In this case an application has been made to the Court to alter the minute of a decree.

The decree was made on the 7th of July last, the application to alter it was made on the 7th of this month, December.

It has been the general practice of this Court to draw up, with the aid of the proper officers, its own decrees and minutes. If any circumstances of difficulty or peculiarity occur, the registrar has generally shown to the proctors of both parties the minute of the decree which he proposes to enter; he has also, when it appeared to him necessary, consulted the judge. In any case, the decree is entered within a day or two of the delivery of the judgment, and can be seen by either party whom it affects, and if either party object to the wording of the minute, and the matter is not adjusted in the Registry, it is competent to either party to make application to the Court upon the subject, but it is important to observe that, according to the practice of this Court, any such application must be made with the utmost expedition. To borrow the language of Dr. Lushington, in the case of *The Monarch* (1), "It must be an error instantly noticed and brought to the attention of the Court with the utmost possible diligence."

The practice of the Court of Chancery with respect to minutes has been referred to. It has been recently much discussed before the Judicature Commission, of which

(1) Robin. 27.

I am a member, and I am not disposed to alter the practice of this Court by adopting that of a Court of equity upon this subject.

Now as to the circumstances of the case before me, it appeared that during the course of the trial a witness was put into the box by the defendant for the purpose, as I understood, of proving the nature of the damage inflicted by the *Orient* upon the *Georgiana*, but he also proved incidentally that he was not the agent of the owner of the *Orient* for the purpose of placing her in the dock, from her improper position in which the damage to the *Georgiana* ensued. It was obvious therefore to the Court, and to the counsel for the *Georgiana*, that if the evidence was admissible, the suit of the *Georgiana* against the owners of the *Orient* must fail. A question arose as to whether the pleadings of the defendant sufficiently raised the defence. Upon the whole, I was of opinion that, having regard to the practice of the Court, as explained in the recent case of *The Why Not* (2), the defence was not properly raised. Though, as I have said, this is a question to be decided according to the practice of this Court, I may observe that this practice does not seem to be at variance with the rules of pleading at common law, as laid down in the 16th of the *Regulæ Generales* of Trinity Term, 1853, and the examples there given (3). I, however, also thought that I ought not to reject the evidence which had actually been given, and gave leave to the defendant to amend his plea. The plea was amended; but afterwards, when it appeared that this amendment would affect the question of costs, it was withdrawn on the ground that the defendant would not have consented to amend if he had understood that to do so would affect the question of costs, and also that he could succeed upon another defence which was properly raised by his plea.

Much discussion ensued upon this matter, reported not altogether correctly, but I dare say with as much accuracy as the rapidity with which the conversation was carried on, and a certain amount of confusion which prevailed at the time, would permit, in the notes of the shorthand-writer which have been sent to me.

(2) 38 Law J. Rep. (N.S.) Adm. 26.

(3) See Day, C.P. Acts, p. 432.

The upshot was that I acted upon the evidence which had been tendered, and which disproved the agency on behalf of the owners of the *Orient* of the person who had placed her in dangerous proximity to the *Georgiana*, and who turned out to be the real wrong doer. Having come to this conclusion, I thought the time of the Court ought not to be occupied by considering the other points raised in the case. I dismissed the suit of the *Georgiana*, but inasmuch as the defence being within the knowledge of the defendant alone, had not been properly raised on the pleadings, and as, if it had been, the suit would, as the counsel for the plaintiff alleged, have been discontinued, I thought it right to make no order as to costs.

The minute of the decree was taken down very soon after the judgment, and was, as the registrar informed me, and as appears from his note, shewn to the proctors of both parties. Some objection to it was taken by the proctor for the defendant, and an alteration was made in it. The matter was not brought to the notice of the Court till the 7th of this month, December, the minute having been entered very soon after the judgment, which was on the 7th of July. I am now asked by the defendant's counsel to direct it to be further altered.

But having regard not only to the interval of time which has elapsed, but also to the merits of the question, and inasmuch as it appears to me that this minute does, on the whole, accurately record the decree of the Court, I must decline to make any order for the alterations of the minute.

---

Attorneys—R. Peckham, for plaintiffs; Fielder & Sumner, agents for H. Brittan & Son, Bristol, for defendants.

---

1869.  
Nov. 23, Dec. 6. } THE EMPIRE OF PEACE.

*Bottomry—Advances—Subsequent Bottomry Bond.*

*A. & Co. agreed to purchase at Akyab cargoes of rice for F. & Co., A. & Co. to be secured by hypothecation of the bills of lading and a fixed freight of 5s. per ton.*

*Whilst the ship E. P. was loading one of the cargoes, A. & Co. advanced about 540l. for ship's disbursements, but upon hearing that F. & Co. had stopped payment, induced the master to execute a bottomry bond both for the advances already made and also for a further sum of small amount:—Held, that the first advances were made partly upon personal security and partly upon the margin of freight, and could not therefore be secured by a subsequent bottomry.*

*Held also, that the further advances were too trivial to render the bond valid with respect to them.*

This was a cause of bottomry. The bond was dated June 14, 1866, and was executed by the master, when the *Empire of Peace* was lying at the port of Akyab, in British Burmah, bound to Queenstown for orders, and was to secure the sum of 540l. odd (together with 30 per cent. maritime premium), advanced by Paul Henri Pierre Anschitzky. It appeared that at the time of the arrival of the *Empire of Peace* at Akyab, Messrs. Anschitzky & Co., of which firm P. H. P. Anschitzky was a member, had agreed with Fernie Brothers, of Liverpool, the owners of the *Empire of Peace*, to supply the vessel with a cargo of rice at 6l. per ton, at a freight of 5s. a ton only, and that Anschitzky & Co. should hold the bills of lading as security for payment of their draughts on Fernie Brothers for the price of the rice, and for the amount of any disbursements they might make for the *Empire of Peace*. Anschitzky & Co., before any express agreement for bottomry was made, had advanced money for necessary disbursements for the ship; and on the 6th of June, 1866, being informed that Fernie Brothers had stopped payment, thereupon refused to make any further advances without the security of a bottomry bond for past and future advances, and the bond was given accordingly.

*Butt and E. C. Clarkson*, for plaintiffs, the bondholders.—The question is whether a bottomry bond is valid if given for an amount which had been previously advanced with a view to another security? In this case the money was advanced upon the hypothecation of the cargo, which takes it out of the category of cases



where money is advanced on the personal security of the owner. As the plaintiffs' security failed there was no breach of faith in asking for a bond. The plaintiffs, by the law of Akyab, already had a lien upon the ship, at all events upon her anchors, chains, and surplus stores, and why should they waive their rights? They were not disqualified from taking the bond any more than a stranger. A bond was the only mode of escape for the ship, and there was nothing inequitable in the plaintiffs availing themselves of the right given by the law of the place—*The Karnak* (1), *The Hebe* (2), *The North Star* (3).

*Milward and Cohen*, for defendants. —If the money was advanced on the security of the margin of freight, that security still existed, untouched by Fernies' failure; therefore, when the bond was executed, the security had not failed. If money is advanced upon personal security, and that security fails, a bond cannot be taken, unless the money is advanced upon an implied contract that a bond will be given. The bills of lading were in the possession of the plaintiffs when the bond was given. It may be true that the money realised by the bills of lading had not yet reached the plaintiffs, and that they might never get it, but the validity of a bond does not depend upon events which have happened after its execution. A bond, given to the agent of the owner, is invalid if the agent has other moneys, the funds of the owner.

*Cur. adv. vult.*

Sir R. J. PHILLIMORE (on Dec. 6).—This is a cause of bottomry, instituted by the holders of a bottomry bond against the ship *Empire of Peace*, and against the Merchants Trading Co. of Liverpool (Limited), the present owners of the ship. The bond is dated the 14th of June, 1866, and was given by the master of the ship to Auschitzky & Co., of Akyab, in British Burmah, for the sum of 540*l.* 1*s.* 7*d.* and 30 per cent. interest. On the same day, and at the same place, another bond was given by the master of the ship to Joseph Charriol,

for the sum of 890*l.* and 30 per cent. interest. The latter bond has been discharged; the former bond is the one the validity of which has been argued before me. It appears from the evidence that an agreement was made between Messrs. Fernie Brothers of Liverpool, and Auschitzky & Co. with respect to the navigation of four vessels, one of which was *The Empire of Peace*, belonging to Fernie Brothers, and that that agreement was as follows:—

“18, Hackin's Hey, Liverpool,  
29th August, 1865.

“Messrs. Fernie Brothers, Liverpool.

“Gentlemen,—We hereby agree to load the ship *Empire of Peace*, of 1,540 tons register, and the *Edward Oliver*, 1,166 tons register, at the port of Akyab, with full cargoes of Negransie rice, of fair average quality, of the crop of 1866 (with the option to load about one-fourth with Larong rice), at 6*s.*—say 6*s.* per cwt. nett, free on board. The ships to commence loading as soon as ready after arrival, provided new rice is being shipped at that time.

“In consideration of the above, you undertake to send the following ships to us to be loaded on commission: viz., the *Prince of Wales*, 924 tons register; the *Green Jacket*, 1,055 tons register; and the *Scottish Chief*, 1,052 tons register, or other vessels of about the same tonnage, all of which ships to be ready to load before the 15th of April, 1866, at the port of Akyab.

“We are to reimburse ourselves for each separate cargo by drafts at six months' sight, drawing for two-thirds of the amount at the time of purchase, and for the remainder on completion of cargo.

“Bills of lading to be signed with a freight of 5*s.* per ton, and are to be attached to the drafts; and should delivery of the rice purchased not be taken before the 15th of April, 1866, we are to be at liberty to draw for the balance of purchase money. Same to be placed in the Godowns, and specially held for the ship's arrival.

“The ships to have the fair average despatch of other vessels loading at Akyab at the same time by other persons.”

With respect to this contract Auschitzky says:—

(1) 2 Law J. Rep. (N.S.) Adm. 289; 37 Law J. Rep. (N.S.) Adm. 41.

(2) 2 W. Robin. 146.

(3) 1 Lush. 45.

"I made a contract with Messrs. Fernie Brothers & Co. in August, 1865, for the loading by my Akyab firm of their ship *Empire of Peace* during the season, 1866.

"To place me in funds for the purchase of these five cargoes, Messrs. Fernie Brothers & Co. offered to furnish me with credit from Barned's Bank, but I declined the proposal, and insisted on having the bills of lading of the cargoes, with a nominal rate of freight, 5s. per ton, hypothecated as security for the value of the cargoes.

"I made this contract in person at Liverpool. No agreement whatever was made by me with Messrs. Fernie Brothers & Co. to furnish the ships with funds for ship's disbursements, as we had merely to supply the ships with cargo. The subject was not mentioned. Captain Clark, of the *Empire of Peace*, whilst at Akyab, asked me for money for ship's disbursements. Though I was not bound to give any, understanding that he could not get the money elsewhere, and the margin of the freight appearing more than sufficient to fully secure both the contract price of the cargo and ordinary ship's disbursements, I let him have what he required, intending, as I had done with the other vessels, to include the amount in our draft, and thus secure it by the 5s. bill of lading; but later on, when my firm learnt the failure of Messrs. Fernie Brothers & Co., they refused to advance any more, and as they knew no bank would negotiate their drafts on Messrs. Fernie Brothers & Co.—more especially for money advanced without any authority—we called on him to refund what he had received (rs. 4,891 4 9). Verbally and by letter on the 9th of June, '66, Captain Clark sent tenders for a loan on bottomry of 14,000 rs. On this we offered, as agents of Joseph Alexander Charriol, to lend that sum on the express condition that he repaid our firm therefrom the rs. 4,891 4 9 already advanced, but it was eventually thus arranged: We accepted a bottomry bond for the equivalent of the rs. 4,891 4 9 (540l. 1s. 7d.), and advanced him rs. 8,060 6 for a bottomry bond accepted by us for J. A. Charriol. The equivalent was 890l. No one else tendered to advance the money, so, unless he had acceded to our terms, he could not have

raised it, and the ship could not have proceeded to sea.

"The money was not against Captain Clark's or the owner's credit—I mean the first advance of rs. 4,891 4 9—but against the margin of the freight; it was never intended to be otherwise. When I made the contract with Fernie Brothers & Co., vessels were being chartered to load at Akyab and other free ports during the season of 1866, at 3l. 5s. to 3l. 10s.

"When I made the contract, I considered that when the cargo should be hypothecated, the margin would cover the value of the cargo without any other credit. The cargo was hypothecated. The cargo cost 6l. 5s., including freight."

Anschitzky says that Charriol has repaid him for this bond which is in suit, as well as for the other; and here I may as well dispose of one point made in favour of this bond, namely, that Anschitzky must be considered as the agent of Charriol, and therefore that whatever legal objections apply to the former as a bottomry bondholder do not apply to the latter. Charriol's name, however, does not appear in the bond; it is said that this was because the master insisted on the bond being in the name of Anschitzky; but however this may be I am of opinion that I must consider Anschitzky as the principal with respect to this bond, and not as the agent of Charriol; it is therefore not necessary that I should consider the case of *The Hebe* (2), to which I have been referred. It appears that in pursuance of the agreement that has been mentioned, the *Empire of Peace* had been loaded with a cargo of rice by Anschitzky & Co., that they obtained from the master the usual bills of lading at the nominal freight of 5s. per ton before mentioned, that they advanced money for the necessary disbursements of the ship, which disbursements were not included in the bills drawn by them on Messrs. Fernie. It appears also that these bills of exchange with the bills of lading annexed were subsequently negotiated by Anschitzky & Co. with a house at Calcutta. Anschitzky left Burmah on the 26th of May, 1866, and was absent from that place during the whole time, when the business of the bottomry bond was transacted. The busi-

ness was carried on in his absence by Mr. Archard, and his evidence shews that the bills of lading at the nominal freight were to be handed to Auschitzky & Co. as a security for the price of the rice and the disbursements and advances, although he says the amount of disbursements was not included in the bills of exchange drawn on Messrs. Fernie. During the absence of Auschitzky Messrs. Fernie stopped payment, and the date of the time when this intelligence reached the firm at Akyab appears to have been the 1st of June, and according to the evidence of Archard, "the greater part or the whole" of the advances which the bottomry bond was to cover were made before the 6th of June, the date of the bond being, as I have said, the 14th. It is said that the evidence shews that some of the advances were made subsequently to the date of the bottomry bond; but if so, they were certainly of a very trifling character, and would not be sufficient to bring this bond within the category of those cases in which the bond has been pronounced for as being partly good and partly bad. This was also a point raised, or rather glanced at, in the argument before me.

The evidence satisfies me that the advances made by Auschitzky & Co. on this occasion to the master of the *Empire of Peace* were made partly on the personal security of Messrs. Fernie, and partly on what Mr. Auschitzky calls "the margin of the freight" on this cargo; and being satisfied of this, I am of opinion, that, according to the law which regulates contracts of this description, it was not competent to Auschitzky & Co. to convert their security, partly personal and partly on the freight, into the security of a bottomry bond. It is not necessary to enter into any explanation of what that law is. It is well known to us, and has been very fully examined and discussed in my recent judgment in *The Karnak* (1).

It was further contended by the holders of the bottomry bond that, at all events, that instrument was legal, inasmuch as the vessel, or the principal parts of her apparel, were liable to arrest for the advances which had been made; and there were no other means of raising the money, except by bottomrying the ship. I am referred

by counsel on either side to *Lloyd v. Gilbert*, in the Exchequer Chamber (4), to *The Hamburg* (5), and to *Cammell v. Sewell* (6). There is certainly not adequate proof before me that by the law of Akyab this vessel could have been arrested. It is said that in the absence of proof I am to presume that the English law generally is in force, and that, under the recent Admiralty Court Act, a vessel may be arrested by material men, but I know no authority for carrying that presumption to the extent that not only the Common Law is in force, but that a particular power recently given by a particular statute to a particular Court can be exercised in a country where I have no evidence that any such Court exists. And, lastly, there is no authority that I am aware of for the position that a vessel could be arrested in the Court of Admiralty by those who have made advances upon a security other than that of the ship itself, as Auschitzky & Co. have done in this case. I must pronounce against this bond with costs.

Attorneys—T. Cooper for bondholders; Chester and Urquhart, agents for Haigh & Co., Liverpool, for defendants.

1869.  
Nov. 30,  
Dec. 7, 21.

THE HEART OF OAK.

#### *Mortgage—Fraudulent Preference.*

*An insolvent debtor must not assign all or nearly all his effects to one creditor, so as to put it out of the debtor's power to carry on his trade. But an assignment is not necessarily fraudulent when it does not include the whole of the trade effects, or when the debtor gets a present equivalent for his goods.*

*The assignment of a security to a particular creditor, even when bankruptcy is inevitable, if the assignment be not made voluntarily, is not necessarily a fraudulent preference.*

(4) 33 Law J. Rep. (n.s.) Q.B. 741; 2 Maritime Law Cases, p. 285.

(5) 2 Moore, P.C. (n.s.), 289.

(6) 5 Hurl. & N. 728; s.c. 29 Law J. Rep. (n.s.) Exch. 350.

*A debtor mortgaged a ship to one creditor, leaving himself scarcely any assets, and at the time of the mortgage both the mortgagor and creditor knew that the mortgagor was practically bankrupt:—Held, that such mortgage was executed by way of fraudulent preference, and therefore void.*

This was a cause of mortgage instituted on behalf of William Frederick Watts, mortgagee of the sloop *Heart of Oak*, against the said sloop, her tackle, apparel, and furniture, and against William Peter Vosper Wallis, the assignee in bankruptcy of Julius Arnoldus Ryke Vandenbergh, the registered owner of the said sloop intervening. This suit was brought under section 11th of the Admiralty Court Jurisdiction Act, 1861 (24 Vict. c. 10).

The plaintiff's petition alleged the execution of a mortgage of the sloop on the 4th day of January, 1869, for the sum of 110*l.*, and the registration of the mortgage on the 29th day of March following. It also alleged the execution of a second mortgage on the 8th day of January, 1869, for the sum of 60*l.*, and the registration of that mortgage on the 3rd day of August following, and that the moneys secured by the mortgages are now due and owing to the plaintiff. The answer alleged the bankruptcy of the mortgagor on the 18th day of May, 1869, and the appointment of the defendant as assignee on the 3rd day of June following. That the mortgages were not executed for the purpose of securing the repayment of any moneys due to the plaintiff, and that if they were executed for such purpose, they were so executed by way of fraudulent preference, with intent to delay and defeat the mortgagor's creditors.

A preliminary objection on behalf of the plaintiff was taken that the defendant had not, as assignee, obtained leave to appear in the suit. *Lee v. Sangster* (1) was cited, and the objection was overruled.

*Giffard and Cohen* for the defendant. —The evidence shews that an act of bankruptcy had been committed within twelve months of the actual bankruptcy, and therefore the second mortgage would

be inoperative, as the ship was at the time of the execution of that mortgage within the order and disposition of the bankrupt —12 & 13 Vict. c. 106. s. 125, see also the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), ss. 37, 43, 55, 66 & 70. Besides, it is not proved that the second mortgage was executed before the bankruptcy. The second mortgage was antedated. It is acknowledged that it was not registered, and it is clear also that it was not executed till after the bankruptcy. As to the first mortgage, it is fraudulent, independent of any considerations as to bankruptcy, and it is a fraudulent preference. It is *per se* fraudulent, because the facts shew a secret trust in favour of the bankrupt—13 Eliz. c. 5; *Twine's Case* (*Smith's Leading Cases*, vol. i. p. 1). It is a fraudulent preference inasmuch as by the mortgage the mortgagor conveyed all his available assets—*Ex parte Foxley, in re Nurse* (2), *Woodhouse v. Murray* (3), *Graham v. Chapman* (4).

*Butt and Pritchard* for the plaintiff. —The objection that the ship was in the order and disposition of the mortgagor at the time of the bankruptcy should have been specifically pleaded. But the ship by the first mortgage was out of the control of the bankrupt, and he was not the owner at the time of the second mortgage, *Griffiths on Bankruptcy*, p. 450; *Joye v. Campbell* (5). As to the fraud independent of bankruptcy, none of the tests mentioned in *Twine's Case* hold good in this. The gift was not general but only of part of the mortgagor's property. The mortgagor did not continue in possession. The mortgage was not secret, but registered in the usual way, nor was it executed pending any legal proceedings in bankruptcy or elsewhere—*Van Castelle v. Booker* (6), *Brown v. Kempton* (7). As to the fraudulent preference, the mortgagor was not really bankrupt until April, 1869, after the

(2) Law Rep. 3 Chanc. Appeal Cases, 515.

(3) 36 Law J. Rep. (N.S.) Q.B. 289; s.c. Law Rep. Q.B. 2 638.

(4) 12 Com. B. Rep. 15; s.c. 21 Law J. Rep. (N.S.) C.P. 173.

(5) 1 Jones & Lefroy, 328.

(6) 2 Exch. Rep. 691; s.c. 18 Law J. Rep. (N.S.) Exch. 9.

(7) 19 Law J. Rep. (N.S.) C.P. 169.

(1) 2 Com. B. Rep. 1; s.c. 26 Law J. Rep. (N.S.) C.P. 151.

execution of both mortgages, for although he had committed an act of bankruptcy in 1866 by "keeping house," no one attempted then or at any other time to make him a bankrupt, and it was not until April that he himself considered his case hopeless, and petitioned the Court. Even if the bankrupt had by the mortgages assigned all his property, the assignments would not alone constitute a fraudulent preference, nor would mere pressure by a creditor; but the Court, acting as a jury, must decide that question upon a consideration of all the facts of the case—*Smith v. Timms* (8), *Johnson v. Fesemeyer* (9), *Balme v. Hutton* (10). In this case the first mortgage did not convey all the mortgagor's interest in the ship, for after that had been given it was still worth the plaintiff's while to advance money on a second mortgage, and that he did spend the money (secured by that mortgage) on repairs of the ship shews the good faith with regard to the first mortgage, as the ship was worthless without the repairs, and he evidently advanced the money under the first mortgage.

*Cour. adv. vult.*

Sir R. J. PHILLIMORE (on December 21st). — This Court is required, and I believe for the first time, to administer the law of bankruptcy as between an assignee and a creditor mortgagee.

The present Lord Chancellor observed in the case of *Ex parte Foxley* (11), speaking of the assignment of property by a bankrupt, "there cannot be any difference in the mode of judging of such an assignment in the Courts of Common Law and Equity," neither can there be, I may add, any difference in the mode of judging of such a case in the High Court of Admiralty, which is both a Court of Law and Equity, and I must endeavour to decide the matter now before me upon the same principles as those which have governed the decisions in those Courts. The industry of counsel has furnished me with reference to all the principal cases, and to some of them I will presently refer.

(8) 1 Hurl. & C. 849; s. c. 32 Law J. Rep. (n.s.) Exch. 215.

(9) 3 De Gex & J. 13.

(10) 2 You. & J. 101.

(11) Law Rep. 3 Chanc. App., 520.

NEW SERIES, 39.—ADMIRALTY.

The material facts to which the law has to be applied are the following:—There was a shipping firm at Portsmouth, of Vandenberg & Son, and to this firm Watts, the plaintiff, before the year 1866 (the exact date I think has not been given) became a clerk, for a twelvemonth without any salary, and afterwards at a salary of 10*s.* a week, but with no obligation to a fixed or regular attendance, and with liberty to carry on a sort of business of his own with masters of ships, for the sale, exchange and transfer of their private adventures. His chief duty to the firm was to enter ships at the Custom House and clear them out. In June, 1866, he entered into an engagement with Mr. Julius Vandenberg, the mortgagor, who appears not to have been a member of the firm, but who carried on business in another room of the same house in which the firm carried on their business. Julius Vandenberg was a ship owner and a commission agent, and Watts was engaged, according to his own statement, "to do his work generally," for which he was to receive 30*l.* per annum, but of that he never did receive a farthing. Almost his first act appears to have been to assist his new master in endeavouring to obtain the assent of creditors to a deed of composition at 5*s.* in the pound. This attempt failed, and Julius Vandenberg was obliged in the year 1866 to do what is technically called "keep his house," which it is admitted constituted an act of bankruptcy, but no creditor chose to make him a bankrupt; and he appears to have remained unmolested until the year 1869, and was therefore, under the 88th section of 12 & 13 Vict. c. 106, not liable at that time for an act of bankruptcy committed more than twelve months before. The *Heart of Oak*, which belonged to Julius Vandenberg, sailed upon what is called the principle of thirds. The master paid the crew their wages and food, deducted two-thirds for himself from the earnings of the ship, and paid the other third to the owner. Watts received this and paid it over to Vandenberg. Watts kept a sort of diary with an account of moneys he had paid for Vandenberg from June, 1866, but he never kept any account of moneys received from him, and took no receipt and made no

D

entry of moneys which he paid over to him; he received from 90*l.* to 100*l.*; he kept no account, but tied the vouchers together; he kept no books at all for himself, and Vandenberg had no banking account.

It appears that receiving no salary or repayments of any kind for his disbursements, Watts pressed Vandenberg for a security and obtained the equity of redemption of some houses; but in January, 1869, there being some considerable sum (about 100*l.*) due to him he pressed for further security, and Vandenberg being satisfied with his accounts, which he says he went through with him, gave to Watts the security of the first mortgage dated the 4th of January, 1869 (which was registered on the 26th of March, 1869), for 110*l.*; Watts prepared this mortgage, as he did the subsequent one, himself. In the early part of the same month—between the 5th and 10th—the *Heart of Oak* got upon the rocks at Lyme Cobb and suffered severe damage. Watts called upon Vandenberg to repair this damage, but Vandenberg declined on the ground that he had no money. Watts undertook to make the repairs and asked for a further mortgage as a security, and he has given some evidence that he expended upwards of 60*l.* for this purpose.

The second mortgage was pleaded, and I am afraid sworn to have been executed on the 8th of January, 1869; it purported to secure the repayment of the sum of 60*l.* It is admitted, however, upon the evidence, that it certainly was not executed until after the 29th of March. The admission is inevitable, because, purporting to be executed on the 8th of January, it recites the registration of the former mortgage on the 29th of March following. This is sought to be explained by reference to an agreement which bears date the 8th of January, 1869, and it is said that the second mortgage was merely an amplification of the agreement which it is urged is contemporaneous with the repair of the vessel. This agreement, I must observe, was not put in evidence till after the cross-examination of Watts. The bankruptcy took place on the 10th of May, and the second mortgage was not registered till the August following. It further appears that in December, 1868, or thereabouts,

another attempt at composition with his creditors was made by Vandenberg, in which Watts took an active part, and which it is said failed on account of the refusal of a single creditor. In January, 1869, the debts were between 1,400*l.* and 1,500*l.*, and it is admitted by Vandenberg, that there are now no available assets for creditors.

I think it unnecessary to go into further detail. I am satisfied upon the whole evidence as to two material points: First, that after the assignment of the equity of redemption in the houses and the mortgage of the *Heart of Oak*, there remained scarcely any, and if any, the most inconsiderable assets in the hands of Vandenberg; secondly, that at the time when these assignments were made, both Vandenberg and Watts were aware that the former was practically bankrupt.

It was said that I had no evidence that the ship was not of greater value than both the mortgages, and that perhaps the property not assigned was therefore considerable, but Watts, in answer to this question put to him by the counsel for the assignee, "How was the composition" (that is the proposed composition of five shillings in the pound) "with the creditors to be paid; you had the equity of redemption of the houses and the mortgage of the *Heart of Oak*," answered after a considerable pause, "I don't know." Nor did he or Vandenberg, in his examination before me, ever pretend or suggest, that there was any margin of property to be derived from the ship after the mortgages had been satisfied. Some furniture said to have been possessed by Vandenberg, but apparently of the most trifling value, was the only property which could be suggested as not being covered by the assignment.

Having arrived at these conclusions of fact, I forbear to dwell upon the various circumstances of suspicion which surround the case of the plaintiff: but I will add, that with respect to the demeanour of the witnesses, while there was obviously much in the broken health and spirits of the bankrupt (who was most humanely cross-examined) to excite compassion, there was apparently no want of candour in his evidence, or in the manner in which

he gave it—a remark which, I regret to say, is in my judgment inapplicable to the testimony of the plaintiff.

It remains for me to state briefly the law which is applicable to this state of facts. Before I consider the general law, I will deal with an argument founded upon the Merchant Shipping and Bankruptcy Acts. The 125th section of the 12 & 13 Vict. c. 106, enacts “that if any bankrupt, at the time he becomes bankrupt, shall by the consent and permission of the true owner thereof, have in his possession, order, or disposition, any goods or chattels whereof he was reputed owner,” &c., such goods or chattels shall be deemed to be the property of the bankrupt, and it was contended that the effect of the sections 37, 43, 55, 66 and 70 of the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), shewed that this vessel, the second mortgage of which was not registered till after the bankruptcy, was still in the “order and disposition” of the bankrupt, and therefore passed to his assignee. To this, I incline to think, though a decision upon this point is not necessary to the view which I take of the case, that it was effectually replied that the words in the 125th section of the first statute, “true owner,” applied to third persons, and that the fact of the registration of the first mortgage before the date of the bankruptcy was sufficient to shew that the vessel could not have been sold by the bankrupt, a position which was further supported by a reference to the 70th section of the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104). It was also contended that, apart from the Bankruptcy laws, these mortgages were under the authority of *Twine's case* (*Smith's Leading Cases*, vol. i. p. 2), fraudulent and invalid, inasmuch as the circumstances shewed that there was a secret trust between the parties, and only a colourable disposition of the property. While I am not prepared to say that this argument is not sound, I shall not decide the case upon this ground, but upon the Bankruptcy laws and the judgments which expound them. I was referred, during the course of the argument, to a great many cases; those which I have principally consulted are—I state them in the chronological order—*Graham*

*v. Chapman* (12), *Smith v. Cannan* (13), *Smith v. Timms* (8), *Johnson v. Fesemeyer* (9), *Woodhouse v. Murray* (14), and *ex parte Foxley re Nurse* (15). From these and other cases, I extract the following principles as applicable to the present case: that a fraud on the Bankruptcy law is not necessarily an intentional fraud; that the cardinal principle of the bankrupt law is that there shall be equal distribution of the bankrupt's effects among his creditors; that among the corollary principles are these:—that a debtor may not assign all or nearly all his effects to one creditor, so as to put it out of his power to carry on his trade; such an assignment is not necessarily fraudulent where it does not include his trade effects, for the test is whether the necessary effect of the deed is to defeat and delay the creditors of the trader, and not whether it stops his trade; an assignment of the whole or an assignment, with a colorable exception of a part only, which is in effect an assignment of the whole, is fraudulent in the eye of the law; the sale of the whole of a trader's effects to a *bond fide* purchaser is not necessarily fraudulent if the trader gets a present equivalent for his goods, but where the payment of an old debt is taken as part of the price, the trader gets no such equivalent, but his transfer has the effect of defeating and delaying his creditors; the assignment of a security to a particular creditor even when bankruptcy is inevitable, if the assignment be not made voluntarily, but at the demand of the creditor, is not necessarily a fraudulent preference.

Applying these principles to the circumstances of the case before me, I am of opinion that these mortgages fall under the category of a fraudulent preference to a particular creditor, inasmuch as by means of these an assignment was made in contemplation of bankruptcy by the trader of all his effects with only a colourable exception; and because such an assignment was made without any present equivalent,

(12) 12 Com. B. Rep. 85; s.c. 21 Law J. Rep. (N.S.) C.P. 173.

(13) 2 E. & B. 35; s.c. 22 Law J. Rep. (N.S.) Q.B. 290.

(14) 38 Law J. Rep. (N.S.) Q.B. 28.

(15) Law Rep. 3 Ch. App. 515.

and the effect of the assignment was to delay and defeat the equal distribution of his assets among all his creditors, I must pronounce against the validity of these mortgages, and dismiss the petition of the mortgagee with costs.

Proctors—Pritchard & Sons, for plaintiff.

Attorneys—Whites, Renard, & Floyd, agents for  
W. P. V. Wallis, Portsmouth, for defendants.

[IN THE PRIVY COUNCIL.]

1869. { THE GENERAL STEAM NAVIGATION  
Dec. 6. { COMPANY, appellants, v. THOMAS  
          { HEDLEY AND OTHERS, respon-  
          { dents.\*  
          { "THE VELOCITY."

*Collision—Sailing Rules, No. 14—Con-  
struction—Ships crossing.*

*Rule 14 of the sailing and steering rules provides that "If two ships under steam are crossing, so as to involve risk of collision, the ship which has the other on her own starboard side, shall keep out of the way of the other." The appellants' ship, in proceeding down a river, and intending to keep her course; in order to round a bend in the river, had her head slightly inclined so as to exhibit her masthead and portlight only to the respondents' ship, which was proceeding up the river:—Held (reversing the judgment of the Admiralty Court), that the vessels were not crossing within the meaning of the above rule. That the fact that the portlight only of the appellants' ship was seen by the respondents was not conclusive evidence that the vessels were crossing; that the relative position of the vessels was not only to be regarded but also the place in which the vessels were situated.*

This was an appeal from a decree of the High Court of Admiralty of England.

The suit in the Court below was a cause of damage promoted by the respondents against the appellants, in consequence of a collision which occurred between the steam vessel *Velocity* and the steam vessel *Carbon*.

The facts of the case were as follows:—Early in the morning of the 5th day of September, 1868, the *Velocity*, a steamship

\* Present—Lord Chelmsford, Sir J. Colvile, & Sir J. Napier.

of about 179 tons register, left London, bound for Calais, with a light cargo, and with twelve passengers on board. After passing Cuckold's Point, up to which point the *Velocity* had been proceeding along the south shore of the river, she crossed the river, and then kept along the north shore, passing Millwall Pier at a distance not greater than a ship's length. She rounded Millwall Pier under her starboard helm, and continued under the starboard helm so as to hug the north shore. The river there takes a considerable bend, necessitating a vessel going down the river using her starboard helm. When the *Velocity* was off the Millwall Pier as aforesaid, a vessel shewing a green light, which afterwards proved to be the *Carbon*, was observed by the master of the *Velocity* about the distance of a quarter of a mile, bearing two points on the starboard bow, and to the south of mid-channel. When the master of the *Velocity* observed the *Carbon* as aforesaid, there appeared to him to be, and there was in fact, no risk of collision; and, accordingly, he did nothing but starboard his helm a little, for the purpose of keeping as near to the north shore as the depth of water would allow.

Very shortly afterwards, however, the helm of the *Carbon* was ported, so as to make her come right across the river. It was then impossible for the *Velocity* to avoid a collision with the *Carbon*, whereupon the master of the *Velocity* put his vessel's helm hard-a-starboard, in order to run her ashore, and thereby save the lives of the passengers. The collision, which had thus become inevitable, took place close to the north shore, the stem of the *Carbon* striking the starboard bow of the *Velocity*, and both vessels taking the ground.

On the 22nd day of October, 1868, the appellants brought an action in her Majesty's Court of Exchequer against the respondents to recover damages in respect of this collision; the respondents pleaded that they were not guilty, and issue was joined on this plea. The issue came on for trial on the 11th and 12th days of December, 1868, before the Lord Chief Baron and a special jury, and resulted in a verdict for the appellants.



On the 22nd day of December, 1868, the cause came on for hearing in the Admiralty Court, and at such hearing the contention on behalf of the respondents was that the *Carbon* was right in porting, that the two steamships were crossing ships within the meaning of the 14th of the sailing and steering rules.

The learned Judge and Trinity Masters were of opinion that the two steamers were crossing each other within the meaning of the 14th of the steering and sailing rules, and that the *Velocity* was solely to blame for the collision, and the learned Judge decreed accordingly.

From this judgment the present appeal was brought.

*Milward, Butt, and Cohen.*—The two steamers were not crossing each other so as to involve risk of collision within the meaning of rule 14 of the steering and sailing rules. The *Velocity* was in a proper position in the river, and those who were on board the *Carbon* had no reason to expect her to cross the river. The *Carbon's* helm was improperly ported, and this caused the collision. No collision would have taken place if each steamer had kept her course.

*Dr. Deane and Clarkson* for the respondents.—The judgment of the Court below was right. It is admitted that this is not a case of steamers' meeting end on, within the meaning of the steering rule No. 13, but the case comes exactly within rule 14. The appellants' and the respondents' ships were certainly crossing within the meaning of that rule. The fact that the masthead and port light of the *Velocity* were alone visible to those on board the *Carbon*, is conclusive evidence of the relative position of the two ships. If it were otherwise, how would those on board know how to steer so as to avoid a collision? It is very important that these sailing and steering regulations should be strictly construed. On such a construction all safe navigation depends. Besides, Rule 18 required the appellant's ship to keep her course.

LORD CHELMSFORD delivered the judgment of their Lordships :—

This is an appeal from a decree of the

High Court of Admiralty in a cause of damage instituted by the owners of a steam-vessel, the *Carbon*, against the owners of a steam-vessel, the *Velocity*, for the damage done to the *Carbon* in a collision between the two vessels, for which collision the learned Judge held that the *Velocity* was alone to blame, and decreed accordingly.

In the course of the argument of the appeal their Lordships were informed by the counsel for the appellants, that the owners of the *Velocity* had brought an action-at-law against the owners of the *Carbon*, and had obtained a verdict with damages. That upon an application to the Court of Exchequer for a new trial, the Chief Baron (who tried the cause) expressed his entire satisfaction with the verdict, that the Court would not grant even a rule *nisi* to set it aside, and afterwards refused to give the defendants leave to appeal.

This verdict must have proceeded upon the ground of the *Carbon* having been solely in the wrong; because, if there had been any fault contributing to the collision on the part of the *Velocity*, although there was even a greater degree of blame imputable to the *Carbon*, the owners of the *Velocity* would not have been entitled to succeed at law.

It is, perhaps, difficult to resist the influence arising from the successful issue of this proceeding-at-law by the appellants, but their Lordships have endeavoured to confine their minds entirely to that which alone is properly before them, the evidence given in the Court of Admiralty, and the reasons stated by the learned Judge for the decree which he pronounced.

The collision took place in the river Thames a little below Millwall Pier, at about 3.45 a.m., 5th September, 1868.

It was a fine moonlight morning, and the tide was about high water, and slack.

The *Velocity*, a steam-ship of 179 tons, was going down the river on her way to Calais.

The *Carbon*, a screw-steamer of 399 tons, was proceeding up the river to London with a cargo of coals.

The *Velocity* had been on the south side of the river until she arrived at Cuckold's Point, when she crossed over to the north shore, and just before the collision was

rounding Millwall Pier and making her way along the north shore under a starboard helm.

The *Carbon* was going up the river in mid-channel, and, at about a quarter of a mile distance, saw the red or port light of the *Velocity* bearing a little on her starboard bow.

The helm of the *Carbon* was immediately ported, which carried her towards the *Velocity*. The captain of the *Velocity*, seeing the danger of a collision, first starboarded the helm and afterwards ordered it to be put hard-a-starboard, so as to get his vessel ashore, and save the lives of those on board, and the *Carbon* ran into her starboard bow and cut her from the deck down to the keel.

It was admitted on both sides that this was not a case of two steam-vessels meeting end on, or nearly end on, so as to require each of them to put the helm to port in obedience to the 13th article of the regulations for preventing collisions at sea. But it was considered by the learned Judge of the Court of Admiralty that the 14th article applied, and that the two vessels were "crossing so as to involve the risk of collision," and that it was therefore the duty of the vessel which had the other on her starboard side to keep out of the way.

The learned Judge in delivering his judgment said, "We" (that is, himself and the Elder Brethren of the Trinity House by whom he was assisted) "think that the evidence establishes that the *Carbon* saw the mast-head and port light of the *Velocity* alone. The vessels were therefore crossing under the rule to which I have referred" (the 14th), "and it was therefore the duty of the *Carbon* to get out of the way of the *Velocity*. The course which the *Carbon* adopted was to port, and the Elder Brethren think that this was the only mode of getting out of the way in the circumstances." But the fact of the *Carbon* having seen the port light of the *Velocity* does not necessarily prove that the *Velocity* was crossing the river, as the learned Judge and his assessors seem to have thought. The relative position of the two vessels when they first came in sight of each other must not alone be regarded, but also the bend of the river in the part

where the collision took place. A vessel rounding the curve of the north shore would necessarily, during some part of her course, have her head slightly inclined towards the south shore, so as to exhibit her port light to a vessel in mid-channel coming in a contrary direction; and, in fact, the *Velocity* was not crossing or intending to cross, the river when she was seen by the *Carbon* but was pursuing her regular course along the north shore; keeping as near to that shore as was convenient under a starboard helm. The appellants alleged that this was the well-known customary track for vessels going down the river, and to establish their case in this respect they called Captain James, the principal harbour-master of the river, who said, "It is the custom that vessels going down, whatever be their tonnage or their cargo, and whether at flood or ebb tide, invariably keep on the north side, and vessels coming up invariably keep on the south side." The quartermaster of the *Dreadnought* hospital ship, which is moored not far from the place where the collision occurred, also stated that the regular course of steamers going down the river is to keep on the north side; and the captain of the *Velocity*, who has been thirty-three years in command of vessels belonging to the Steam Navigation Company, said that for twenty years he had always in going down the river gone as close as he could to the north shore, as his usual track and the shortest way.

That there has been a practice for vessels going down the river to prefer the north to the south shore is proved by the above evidence, but that there was any custom of this kind in the strict sense of the word, to which all vessels would be bound to conform, is certainly not the fact. On the contrary, from the year 1854 down to the year 1862, the rule laid down by Act of Parliament required vessels going down the river to keep towards the south shore. By the 297th section of the Merchant Shipping Act of 1854, it was enacted that "every steam-ship when navigating any narrow channel shall, whenever it is safe and practicable, keep to that side of the fair way or mid-channel which lies on the starboard side of such steam-ship." Therefore, the

captain of the *Velocity* in running down the river on the north shore, which he stated to have been his invariable practice for twenty years, was, for some of those years, acting in direct disobedience to the Act of Parliament. But, in 1862, by the Merchant Shipping Acts Amendment Act the 297th section of the former act was repealed, and vessels navigating the river were left at liberty to go on whichever side of it they pleased, taking care, of course, to observe the regulations for preventing collisions. The *Velocity*, at the time when she was seen by the *Carbon*, was where, under the existing law, she had an undoubted right to be, and was pursuing her regular course along the north shore, when her red light presented itself to the *Carbon's* view. Now, if the persons in charge of the *Carbon* knew, as they ought to have known, the bend of the river in that part, and also knew that it was usual for vessels going down the river, to steer their course along the north shore, they had no more right to assume that the *Velocity* was in the act of crossing the river than that she was pursuing an ordinary course in her way down the river. The learned Judge of the Court of Admiralty held that, as the vessels were crossing, the *Carbon* ought to have kept out of the *Velocity's* way. And the counsel for the respondents argued that, if this were the case, the *Velocity*, by the 18th article of the regulations, ought to have kept her course,—which they interpreted to mean, that she should have followed the direction in which her head happened to be turned at the time when she was seen by the *Carbon*. But such an interpretation of the rule would lead to constant uncertainty and perplexity, as the course of a vessel would be continually varying whenever she had to turn out of the way to avoid any other vessel, or might be compelled to follow the turns and windings of a river.

If the 18th article applies, the *Velocity* was bound to keep her course down the river on the north shore, and this course she kept till collision with the *Carbon* was imminent, when she put her helm hard-a-starboard to run herself on shore. Their Lordships are of opinion, however, that this was not a case in which either the 13th or the 14th article of the regulations was

applicable. It was admitted that this was not a case of two ships under steam meeting end on, or nearly end on, under the 13th article, and in their Lordships' judgment the *Velocity* and the *Carbon* were not "crossing" within the 14th article. But putting the regulations aside, they are at a loss to discover what possible blame can be imputed to the *Velocity*. She had a perfect right to be where she was, and she was pursuing an usual course of navigation down the river, from which she never deviated until forced to do so by the peril of a collision into which she was brought by the sudden change of course of the *Carbon*. On the other hand, the *Carbon* appears to their Lordships to be wholly to blame. She knew, or ought to have known, that a vessel going down the river had a right to run down on the north shore, and that in the position in which she was the appearance to her of the red light of a vessel on that side of the mid-channel was no indication that the vessel was in the act of crossing the river; and yet there being nothing else to justify the belief, she acts at once upon her hasty and erroneous conclusion and so occasions the collision. Even supposing the *Carbon* to have excusably mistaken the course of the *Velocity*, how can she recover unless she shews that the *Velocity* was in fault?

Their Lordships (as already observed) are unable to discover that any degree of blame can be attributed to the *Velocity* either by her having pursued a course which she was not at liberty to pursue, or having been handled in any way which the course down the north shore did not prescribe.

They will therefore recommend to Her Majesty to reverse the decree appealed from, to dismiss the appellants from the suit, and to condemn the respondents in the costs in the Court below, and also in the costs of this appeal.

---

Attorneys—Cattarns and Jehu, for appellants;  
Dyke and Stokes, for respondents.

---

1869. }  
Dec. 9, 21. } THE NORTHUMBRIA.

*Jurisdiction—Limited Liability — Vessel not under Arrest.*

*In suits for limiting the liability of the owners of a wrong-doing vessel the Court has jurisdiction if bail has been given by her owners, even though no arrest has actually taken place.*

This was a question as to the jurisdiction of the Court, and arose out of a suit to limit the liability of the owners of the *Northumbria* in respect of a collision with the *Hesperia*.

The case had been before the Court on a previous occasion as to the period from which interest should accrue from the wrongdoer (1); and since then a question was raised as to the jurisdiction of the Court, inasmuch as the vessel was not technically under arrest at the time of the institution of the suit for limitation of liability (2).

*Butt and Steavenson* for the *Northumbria*.—Those who have appeared have not, either by plea or otherwise, objected to the jurisdiction, which is therefore conclusive, except against those not before the Court.—*The Kalamazoo* (3).

*E. C. Clarkson*, for the *Hesperia*, and *Gainsford Bruce*, for the owners of the cargo of the *Hesperia*, supported the application.

*Cur. adv. vult.*

SIR R. J. PHILLIMORE (on December 21st).—In the present case the vessel has not been under arrest, because the owners, under rule 55 of this Court, took out a *caveat* warrant, and offered to give bail.

(1) See *The Northumbria*, p. 3.

(2) The section of the Admiralty Court Act, 1861, which gives the Court jurisdiction, is as follows:—Section 13. Whenever any ship or vessel, or the proceeds thereof, are under the arrest of the High Court of Admiralty, the said Court shall have the same powers as are conferred upon the High Court of Chancery in England by the ninth part of the Merchant Shipping Act, 1854.

(3) 15 Jurist, 885.

Bail having been given, the formal warrant of arrest became unnecessary. Stripped of these technicalities, the plain meaning of this language is this: The defendant says to the plaintiff, "Don't arrest my ship; I will consent to give that bail which would have released my ship if the warrant had been served upon her." There can be no doubt, I think, what was the intention of the legislature in the section to which I have referred—namely, that whenever the Court was seized of the "res," the jurisdiction as to limitation of liability should attach. The bail is the representative of the "res," and to all intents and purposes the Court is as much seized of the possession as if the "res" itself had been under warrant of arrest and released. According to the old practice, the jurisdiction of the Queen's Bench was in certain cases only founded on the fact of the defendant being in the custody of its marshal; but this principle was holden to be satisfied by the defendant's appearance, or by his putting in bail, "for," as Mr. Smith, in his *Action at Law*, ed. 1857, p. 7, observes, "in those cases, though not in the real, he was in the constructive custody of the marshal." And surely, in the case before me, the "res" is in the constructive, though not in the real custody of the marshal of the Court. But even if this analogy be unsound, which it does not appear to me to be, I should still be of opinion that, looking to the whole scope and tenor of the Act, the jurisdiction of this Court was intended to be founded in suits of this description, when it is in possession of the bail which represents the "res" whether the "res" has been released in the giving of bail after the arrest, or whether the arrest has been prevented, as in this instance, by such a *caveat* as has been issued in this case.

*Decree accordingly.*

Attorneys.—Hillyer and Fenwick for plaintiffs;  
Lowless and Nelson for owners of the *Hesperia*;  
Walton, Bubb and Walton for owners of cargo of the *Hesperia*.

1870. }  
March 2, 9. }

## THE ENERGY.

*Damage—Action against Steam-tug for Collision whilst Towing.*

The *L. A.*, in charge of a pilot and in tow of the steam-tug, *E.*, was coming up the river Thames, and the *M.* under full sail, was crossing. The *E.* attempted to tow the *L. A.* ahead of the *M.*, but the *L. A.* and *M.* came into collision:—Held, that the steam-tug was to blame for attempting to tow across the bows of the *M.*, and the pilot of the *L. A.* for not ordering the *E.* to slip the tow-rope in time to avoid the collision. And a suit by the owners of the *L. A.* to condemn the steam-tug *E.* in the damage done to both the *M.* and *L. A.*, was dismissed, but without costs.

This was a cause of damage by the owners of the barque *Lizzie Aisbitt* against the steam-tug *Energy* to recover damages and losses occasioned by a collision between a brig called the *Mary* and the *Lizzie Aisbitt* while the latter was in tow of the *Energy*.

On the 1st day of April, 1867, the *Energy* took the *Lizzie Aisbitt* in tow off Southend for London, and when in Clement's Reach, the *Mary* was standing over to the northward and westward beating up the river. The steam-tug endeavoured to tow the *Lizzie Aisbitt* ahead of the *Mary*, and herself just passed clear, but although attempts were made to cast off the tow-rope, the stem of the *Lizzie Aisbitt* struck the *Mary* amidships, and did her considerable damage. The *Lizzie Aisbitt* was in charge of a duly licensed pilot, whom the owners were compelled to employ. For this collision an action was brought by the owners of the *Mary* against the *Lizzie Aisbitt* in the High Court of Admiralty, and on the 23rd of November, 1867, the Court condemned the *Lizzie Aisbitt* in the damage to the *Mary*; and the owners of the *Lizzie Aisbitt* now sought to recover from the *Energy* the amount of the damage done both to the *Mary* and the *Lizzie Aisbitt*.

Clarkson for the plaintiffs; and Murphy for the defendants.

*Cur. adv. vult.*

NEW SERIES, 39.—ADMIRALTY.

SIR R. J. PHILLIMORE.—After a lapse of more than two years, no cause being assigned for the delay, the *Lizzie Aisbitt* has brought an action against the *Energy*, praying that she may be condemned in all the damages and losses occasioned to the plaintiff by reason of the said collision, or the negligence or want of skill of those on board the steam-tug *Energy*.

Two questions of law have been suggested in argument in this case, first, whether the Court has jurisdiction in this matter; second, whether the *Energy* has broken her contract with the *Lizzie Aisbitt*, and thereby become responsible to her for the damages incurred by the collision.

The question as to jurisdiction does not come before the Court for the first time. The jurisdiction of the Court was recognised to a certain extent in the case of the *Julia*, to which I will presently more fully refer. In the *Nightwatch* (1) it was directly affirmed, a case precisely similar in its circumstances to the present, while in the *Robert Pow* (2), the limits within which the jurisdiction must be exercised were laid down. I pronounce, therefore, in favour of the jurisdiction of the Court.

I have next to consider whether the *Energy* has, by reason of a breach of contract with the *Lizzie Aisbitt*, become liable for the damage occasioned by the collision of that vessel with the *Mary*. In the year 1841, Dr. Lushington decided in the *Duke of Sussex* (3) that a steam-tug employed in towing a vessel in the river Medway was not responsible for a damage occasioned by the vessel in tow coming in contact with another vessel, the vessel in tow having a licensed pilot on board at the time, and no error or negligence being established on the part of the crew of the steam-tug. In the course of his judgment he observed: "Does, then, the circumstance of a vessel, being in tow at the time, in any degree alter the liability of parties? I apprehend not. What would be the consequence of taking the responsibility from the pilot on board a vessel in tow, and

(1) 1 Lush. 542; s. c. 32 Law J. Rep. (N.S.) Adm. 47.

(2) Brown & Lush. 99; s. c. 32 Law J. Rep. (N.S.) Adm. 164.

(3) 1 W. Rob. 274.

casting it upon the steamer? Its immediate effect would be a conflict of authorities which would lead to inextricable confusion, and be highly prejudicial to the owners of vessels. Under the existing law, if a licensed pilot is on board and his orders are obeyed, the owners are absolved from responsibility for damage occasioned by the vessel; but if the pilot was to be deprived of his authority, and the steamer was not bound to follow his directions, and a collision ensued, the steamer would be the agent of the owners of the vessel in tow, and the owners of that vessel would no longer be protected by the Act of Parliament.

In 1848 the same learned judge decided in the case of the *Christina* (4) that steam-tugs employed in an ordinary service of towing merchant vessels, are bound to be subservient to the orders of the pilot on board the vessel in tow. In delivering his judgment Dr. Lushington said: "The action in this case is brought by the owners of a steam-tug, alleging that, in pursuance of a contract with the owners of the vessel proceeded against, they duly fulfilled that contract in towing her from Gravesend to the Surrey Canal Docks. This averment is denied by the owners of the *Christina*, and it is alleged in their behalf that a collision with a brig called the *Mary Clarke* was occasioned by the misconduct of the persons on board the steam-tug, and that the owners of the barque having incurred heavy expenses in repairing the brig as well as their own vessel, were entitled to keep back the 8*l.* claimed by the steam-tug by way of a set-off. The true question, I conceive, which I have to determine is, not whether there is anything in this case in the nature of a set-off, but whether the owners of the steam-tug have fulfilled the contract which they allege themselves to have entered into with the owners of the vessel proceeded against. In a former decision, I have had occasion to observe, that in all ordinary cases of this kind, I consider it to be a part of the contract itself, that the steam-tug should be subservient to the pilot on board the vessel in tow, and that it is the duty of the

persons on board the steam-tug implicitly to obey and carry out his orders. I am speaking now of a steam-tug in the performance of an ordinary towage service. There may, indeed, be cases in which this duty ought to be relaxed, and where the rule could not possibly be applied, as, for example, in cases of salvage, where the master of the steam-tug is called in to remedy the errors or misfortunes of the pilot, or where he sees a pilot acting in such a manner as to threaten the certain destruction of his own vessel, and to endanger the lives and property of others. In such cases, the master of the steam-tug would unquestionably be justified in exercising his own discretion, and in acting upon his own knowledge independently of the pilot. But these cases, it is to be observed, form the exceptions to a general rule, and where such exceptions are alleged, they must be proved by the fullest and most satisfactory evidence. In delivering my judgment in the case of the *Duke of Sussex*, I expressed my strong opinion upon the necessity of adhering rigidly to this rule, and I see no reason to depart from that opinion in the present instance."

In 1861, in the case of the *Julia*, 1 *Lush.* 231, the Privy Council dealt with this question of contract as follows:—"The tug was hired off Folkestone, and the contract was, that she should take the *Julia* in tow when required, and tow her as far as Gravesend. Their lordships think it quite immaterial whether this hiring took place on the importunity of the crew of the tug, or on the spontaneous suggestion of the master of the *Julia*. When the contract was made, the law would imply an engagement that each vessel would perform its duty in completing it; that proper skill and diligence would be used on board of each, and that neither vessel, by neglect or misconduct, would create unnecessary risk to the other, or increase any risk which might be incidental to the service undertaken. If, in the course of the performance of this contract, any inevitable accident happened to the one without any default on the part of the other, no cause of action could arise. Such an accident would be one of the necessary risks of the engage-

(4) 3 W. Rob. 27.

ment to which each party was subject, and could create no liability on the part of the other. If, on the other hand, the wrongful act of either occasioned any damage to the other, such wrongful act would create a responsibility on the party committing it, if the sufferer had not by any misconduct or unskilfulness on his part contributed to the accident. These are the plain rules of law by which their lordships think that the case is to be governed."

The conditions of the contract, therefore, between the tug and the vessel towed under the charge of a pilot, are, so far as they affect this case, that on the one hand the tug shall be competent to tow the ship and shall obey the orders of the pilot, and that on the other hand the pilot shall give proper directions to the tug and superintend her navigation as well as that of the ship on which he is aboard. The defence of the tug *Energy* in this present action is two-fold: first, that she acted rightly in porting and crossing the bows of the *Mary*, and that the *Lizzie Aisbitt* acted wrongly in starboarding and trying to pass under the stern of the *Mary*; secondly, that the pilot did not give the proper directions to the *Energy*.

The facts of the case, so far as it is necessary to state them, are as follows:—

[His Lordship stated the facts of the case and proceeded.]

The master of the *Lizzie Aisbitt* says that the river was thronged with vessels, and that the tug ought not to have gone, as she did, up mid-channel, but on one or the other side of the river. The Trinity masters do not think the tug was wrong in the course which she took; if she were wrong the pilot was to blame for not giving her orders to alter her course. There were 150 feet of tow rope out. The *Lizzie Aisbitt* had passed two vessels lying in the stream, one by starboarding, the other by porting, just before the collision, and the *Mary* was particularly noticed by the pilot at a distance of 250 feet, when the tug and the *Lizzie Aisbitt* were straight up the reach. The *Mary* was standing across the river on the port tack, and the tug ported and cleared the *Mary*, the *Lizzie Aisbitt* starboarded under the direction of the pilot and ran into her amidships

on the starboard side. The pilot had previously run to let go the rope, which was wound round the starboard bitt-head, but he found no one, he says, to help him in doing this.

The Trinity masters advise me that when the *Mary* was seen, it must have been apparent that she was not backing and filling, but under full sail standing to the north on the port tack, and of course with headway upon her, and it was an error in judgment on the part of the tug to attempt to tow the *Lizzie Aisbitt* across the bows of the *Mary*. The *Lizzie Aisbitt* would probably have come into collision if she had followed the tug, although the tug herself just succeeded in clearing the *Mary*.

The first defence, therefore, set up on behalf of the tug in this cause fails.

I have now to consider the second defence, viz., that the pilot did not give proper directions to the tug. It was the duty of the pilot, when the tug ported, to hail her to let go the tow rope. The tow rope on board the tug is attached by a simple slip, an eye over a hook, so fastened that it can be let go immediately. The pilot, according to his own evidence, gave no order at all to the tug, but ran himself to cast the rope off from the starboard bitts round which it was belayed; in doing which, he was, as I have said, unassisted. The tug, if the proper order had been given to her, could have cast off her rope in a much shorter time. And if that order had been given, in all probability the barque would have gone under the stern of the *Mary*, and the collision would not have taken place. If the tug had disobeyed the order of the pilot, she would have been guilty of a breach of contract, and have been responsible for the collision. As it was, the tug committed an error which was not corrected, as it ought to have been, by an order from the pilot. I must, therefore, dismiss the suit against the tug; but, having regard to all the circumstances, I shall make no order as to costs.

*Decree accordingly.*

Attorneys—Stocken & Jupp, for plaintiffs; Thomas Cooper, for defendants.

1870.  
March 15, 29. } THE JOHN BELLAMY.

*Damage—Reference to Registrar—Claim by Underwriters—Evidence.*

*On a reference to the registrar in a cause of damage the plaintiffs, who were underwriters of the cargo, and had paid as for a total loss, produced in support of their title as owners of the cargo lost, the policies of insurance of the cargo, the bills of lading, and the invoice and copy manifest;—Held, that the plaintiffs must give further evidence of the value of the goods, and of a discharge from the owners of the cargo.*

This was a special case for the opinion of the Court upon the questions of law arising from the following facts:—The ship *John Bellamy* had been pronounced solely to blame in certain causes of damage instituted against her in the High Court of Admiralty, and had been condemned in damages and costs. On the reference to the registrar and merchants, it appeared that one of the causes had been instituted on behalf of Richard Rhod Swan and others, "owners of cargo, now or lately laden on board the brigantine or vessel *Eureka*." But these plaintiffs turned out to be not the owners of the cargo at the time of shipping it, but underwriters upon the cargo who had paid for a total loss upon it before the institution of the suit. They produced the policies of insurance, which had been given up to them, and the bills of lading, and also the invoice, and a copy of the manifest.

*Deane and Clarkson*, for plaintiffs.—As holders of the bills of lading of the cargo, and having paid for a total loss, the plaintiffs are the absolute owners; they are the only proper persons able to give a discharge, and cannot be compelled to discover the owners of the cargo at the time of shipment otherwise than as appears by the bills of lading, or shew that the insurance moneys were paid to them, or on their account, further than is shewn by the delivery up of the policies and bills of lading. The plaintiffs are not bound to obtain their discharge.

*Butt and Cohen*, for the defendants.—The plaintiffs should prove who were the true owners of the cargo, and to whom,

and on what account, the insurance moneys were paid. They should also procure a discharge from the persons on whose behalf the cargo was shipped, as, until this is done, the defendants are unable to investigate and settle the proper value of the cargo which they would have to pay.

*Cur. adv. vult.*

SIR R. J. PHILLIMORE.—That the underwriters must sue in this Court in the name of the owner is a position admitted by the counsel on both sides. It is an equally incontrovertible position that where, as in this case, an abandonment by the shippers to the underwriters is proved, all that the shippers can give is passed to the underwriters. The question is, have the shippers given such a title to the underwriters as enables them to claim from the defendants the damages and costs due to the owners of cargo on board the *Eureka*, or, in other words, have the shippers proved that they were, or that they represent, the owners of the cargo, who are indemnified by the party condemned in those damages? The defendants, the *obligati ex delicto*, have certainly a right to be secured against the liability of a future demand from the possessors of a better title than that which has been furnished by the shippers to the underwriters.

The defendants contend that they would not have this security if they paid the compensation awarded to the underwriters on the present evidence, and that they are entitled to insist on the production of a discharge from the original owners, which the underwriters cannot or will not obtain from the shippers.

The underwriters maintain that they have produced all the requisite evidence; they rely on the fact of the shipment of the goods by the shippers, proved by the bills of lading, on the fact of the insurance of the goods by the shippers, proved by the return of the policies and receipt for the money paid upon the insurances, and upon the proposition of law that the shipper is the agent of the owner so as to bind him in this matter, and to secure the defendant against any future demand from him. I have to consider whether this evidence of title to the property be adequate, and such as the defendant must accept.



First, as to the bill of lading. This instrument is not *per se* incontrovertible evidence that the property specified in it has passed to the holder.

A bill of lading is a contract of carriage, disclosing the names of shipper and consignee only, and does not prove that the shipper is the owner. These bills are usually drawn out in triplicate; in the present instance I observe that the bill of lading has these words: "In witness whereof, the master, or purser, of the said ship has affirmed to four bills of lading, all of this tenor and date, the one of which bills being accomplished, the other three to stand void." It may be that one of these bills of lading has been delivered at an earlier date to some persons other than the underwriters, which other persons would, on the ground of earlier possession of the bill of lading, have a prior title to the goods—*Barber and others v. Myerstein* (1), *Couturier and others v. Hastie and others* (2).

With respect to the fact of insuring, the insured may have done so as agents, or have had an insurable interest of their own in the goods, distinguishable from property in them.

With respect to the receipt of the money paid on the insurance, the insurer is only concerned in ascertaining that the money is paid to the person who insured, who, as I have already said, is not necessarily the owner of the goods.

With respect to the contention that the shipper is the agent of the owner and would bind him by his act in this matter, and therefore secure the defendant from future liability, no authority has been cited which satisfies me that this proposition of law is sound. The shipper is the agent of the owner to put the goods on board, but I am not satisfied that the insurance of the goods is within the ordinary scope of his agency; and no special circumstance is suggested in the case before me. It has also been contended by the counsel for the defendant that he is entitled to the best evidence as to the value of the goods which he is to pay. The underwriters, of course, do not know the value of the goods, and the invoice

does not necessarily furnish it. The real value may be, and often is, from various causes, not represented in the invoice, and it is urged that if the owners were disclosed the defendant would have the means of ascertaining the true value of which he is now deprived, and that the underwriters ought not to be allowed to stand in a more favourable position than the owner whom they represent.

After some consideration, I am of opinion that the defendant is entitled to require evidence of a discharge from the original owners before the underwriters can enter upon the investigation of the amount of compensation for which he is liable.

I do not mean, however, to decide that sufficient evidence of the value of the goods may not be obtained without a personal examination of the owners, and incurring an expense which such an examination in the case of foreign owners must entail. No order as to costs.

*Decree accordingly.*

Attorneys—Lowless & Nelson, for plaintiffs;  
Westall & Roberts, agents for Forshaw & Hawkins, Liverpool, for defendants.

1869. }  
Dec. 21. }

THE PRINCESS ROYAL.

*Amendment—Mistake in the Præcipe to institute Cause.*

*In the præcipe to institute the cause the plaintiffs stated the suit as one of "damage to cargo," and the affidavit to lead warrant alleged that plaintiffs had sustained damage by breach of duty and breach of contract. After the arrest of the ship and appearance entered on behalf of her owners' motion to amend by striking out of the præcipe to institute the words "damage to cargo," and substituting the words "breach of duty and breach of contract on the part of the master and crew," granted on payment of the costs occasioned by the mis-statement in the præcipe.*

On the 24th of November, 1869, a cause was instituted on behalf of the owners of the cargo of the *Princess Royal* against the *Princess Royal* and her freight. In the præcipe to institute, the cause was stated to be "a cause of damage to cargo." At the time the cause was insti-

(1) Law Rep. 4 Appellate Series, 317.

(2) H.L. Rep. 673.

tuted, an affidavit to lead warrant was filed. The affidavit stated, that the plaintiffs had sustained considerable damages by the breach of duty and breach of contract on the part of the master and crew of the *Princess Royal*, and that no owner or part owner of the vessel was domiciled in England or Wales. A warrant was forthwith issued, and the ship was arrested on the 25th of November. On the 29th of November an appearance was entered on behalf of the owner of the *Princess Royal*.

H. H. Shephard, on behalf of the plaintiffs, now moved to amend the præcipe to institute by striking out the words "damage to cargo."

[SIR ROBERT PHILLIMORE.—What words do you propose to substitute?]

If necessary, it is proposed to substitute the words "breach of duty or breach of contract on the part of the owner, master or crew of the ship." Those are words used in the 6th section of the Admiralty Court Act, 1861.

Mr. G. F. Phillimore, for the defendants. The original motion, as it stood, was wholly improper, but if the application in the form in which it is now put by counsel be granted the plaintiffs should pay the costs of the cause up to the present time. Until now the whole proceedings have been irregular. A suitor cannot avail himself of the process of this Court to arrest a ship unless in the præcipe to institute he states the nature of the cause of action in respect of which he arrests her. The Court of Chancery has laid down very stringent rules with reference to the writ of *ne exeat regno*, and this Court should not be less careful to prevent the abuse of its process. Daniell's *Chancery Practice*, 4th ed. p. 1536. If the plaintiff in a cause arrests property he does so at his peril. The ship proceeded against has been arrested in a cause of damage to cargo, and now it is practically admitted that there is no cause of action in respect of damage to cargo.

SIR ROBERT PHILLIMORE.—The cause of action has been properly stated in the affidavit which is called the affidavit "to lead warrant," and all that the plaintiffs now by their motion as amended ask leave to do is to amend "the præcipe to institute,"

so as to make it correspond with the affidavit to lead warrant. I grant leave to the plaintiff to amend the præcipe by striking out the words "damage to cargo" and substituting the words "breach of duty or breach of contract on the part of the owner, master or crew of the ship." The plaintiffs must pay the costs occasioned by the mis-statement of the cause of action in the præcipe to institute.

*Amendment accordingly.*

Proctors—Dyke & Stokes, for plaintiffs.

Attorneys—C. M. Bartror, agent for Turnbull & Bell, West Hartlepool, for defendants.

1870. }  
March 29. }

THE HERMAN WEDEL.

*Salvage—Jurisdiction under 1,000l.—Agreement.*

*Where a vessel had been arrested in two causes of salvage, which upon motion by consent of all parties had been consolidated, and a petition was afterwards filed, a motion by defendants to dismiss the suit with costs and damages, as the value of the property saved was under 1,000l., was rejected with costs.*

*Semble—Under the County Courts Admiralty Jurisdiction Act, 1868, the High Court of Admiralty may in its discretion take cognizance of salvage suits when the value of the property saved is under 1,000l.*

On the 2nd of February, 1870, the brig *Herman Wedel*, of Holmestrand, in Norway, having been found derelict, was brought into Dartmouth, and on the 3rd and 5th of the same month two causes of salvage, one in the sum of 1,800l. and the other in the sum of 2,500l., were instituted against the vessel, and, the master being unable to obtain bail, the vessel remained under arrest. The defendants appeared absolutely, and on the 11th of March the two suits were upon motion on behalf of the defendants consolidated.

*Pritchard* moved to dismiss the suits, and to condemn the plaintiffs in costs and damages.—It is clear, from the valuation of the person appointed by the receiver (under the 50th section of the Merchant Shipping Act, 1862), that the

value of the property saved is only 950*l.*, and this valuation is confirmed by the affidavits on behalf of the defendants. The Court's jurisdiction is ousted immediately proof is given that the value is under 1,000*l.*—The Merchant Shipping Act (Amendment Act), 1862, s. 49; *The William and John* (1); *The Louisa* (2). The County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71) does not affect this case. This is not a cause transferred from the County Court under section 6, nor is section 9 (3) applicable, as there has been no agreement to take proceedings in this Court. That section cannot be construed to confer jurisdiction, otherwise it must give a similar jurisdiction in all salvage cases to every superior Court. As to damages he cited *The Eleonore* (4); *The Margaret and Jane* (5).

*Deane and Cohen*, for plaintiffs.—The affidavits filed by the defendants do not conclusively shew the value to be under 1,000*l.*, and the plaintiffs' affidavits contradict the fact, and prove a larger value. The consolidation of the causes amounts to an agreement that the causes should be tried in this Court, and under such circumstances the 9th section of the County Courts Act gives this Court jurisdiction.

*Pritchard* in reply.

(1) Br. & L. 56; s. c. 32 Law J. Rep. (n.s.) Adm. 102.

(2) Br. & L. 58.

(3) The 31 & 32 Vict. c. 71. s. 9, enacts, "If any person shall take, in the High Court of Admiralty of England, or in any superior Court, proceedings which he might without agreement have taken in a County Court, except by order of the Judge of the High Court of Admiralty, or of such superior Court, or of a County Court having Admiralty jurisdiction, and shall not recover a sum exceeding the amount to which the jurisdiction in the County Court in that Admiralty cause is limited by this Act, and also if any person without agreement shall, except by order as aforesaid, take proceedings as to salvage in the High Court of Admiralty, or in any superior Court in respect of property saved, the value of which, when saved, does not exceed 1,000*l.*, he shall not be entitled to costs, and shall be liable to be condemned in costs, unless the Judge of the High Court of Admiralty, or of a superior Court, before whom the cause is tried or heard, shall certify that it was a proper Admiralty cause to be tried in the High Court of Admiralty of England or in a superior Court."

(4) Br. & L. 185.

(5) 38 Law J. Rep. (n.s.) Adm. 38.

Sir R. J. PHILLIMORE.—This is a cause of salvage, instituted in the High Court of Admiralty. The plaintiffs, having filed their petition, move the Court to order the defendants to file their answer, and to appoint an early day for an examination of a portion of the crew, and there is a counter motion on behalf of the defendants to this effect: That I will dismiss the suit for want of jurisdiction, and condemn the plaintiffs in the costs of the suit.

Now if the law compelled me to comply with the prayer of the defendants I should be very sorry, because I should feel that this Court had been made the instrument of doing considerable injustice. However, if the law be, as has been pressed upon me by the counsel for the defendants, that whenever it is disclosed to this Court that the sum is under the value specified in the 3rd section of the County Court Admiralty Jurisdiction Act, 31 & 32 Vict. c. 71, the jurisdiction of this Court is absolutely ousted, I should have no alternative but to make the order which the defendants pray.

The dates of proceedings in the cause are of some importance with respect to the application of the law to the facts of the case which I am about to mention.

This vessel, a derelict foreign vessel, was salvaged about the 2nd of February, and was brought into Plymouth on the 2nd or 3rd of February, and on the 9th of February the salvors instituted a cause in this Court.

On the 14th of February, the present defendants instituted an absolute appearance, and on the 25th of February, I find that the salvors having pressed the defendants to file affidavits as to the value of the ship were opposed by the defendants, and at the requisition of the defendants their application was rejected with costs. I mention that circumstance because it goes to shew that there was certainly on the part of the plaintiffs in this case a *bona fide* desire not to place a foreign vessel in a wrong position with respect to bail, but an earnest wish on their part apparently to ascertain what was the real value of the ship, and that bail should be given for that, and not for a fictitious amount.

On the 4th of March, I find there were affidavits filed by the defendants, one by a

Mr. Philip, another by a Mr. Ashford; making the value of the vessel 1,273*l.*, and of the cargo 677*l.* 9*s.* 6*d.*, therefore somewhat under the sum of 1,000*l.*; and on the 15th of March, at the request of the defendants, as well as the plaintiffs, the two causes of salvage which had been brought were consolidated, and it is not till the defendants are pressed for their answer in the plaintiffs' motion of to-day, that they set up for the first time that the Court has no jurisdiction by reason of the value of the vessel, and the cargo being under 1,000*l.*

Various cases have been cited to me, *The William and John* (1), and *The Louisa* (2) (which were principally relied upon to prove that under the Merchant Shipping Acts, which absolutely and in express terms took away the jurisdiction of this Court where the value was under 1,000*l.*), objection might be taken to the jurisdiction of the Court at any time, and in the opinion of my learned predecessor, was fatal to whatever extent proceedings had previously gone.

I do not find myself at all pressed with the authority of those cases; if I did I should certainly think it my duty to follow them, but since those cases were decided, the Statute 31 & 32 Vict., chapter 71, which was passed in 1868, has become the law of the land, and has made a most material difference (according to the language of the enactment) in the jurisdiction of this Court with respect to suits instituted for a value under 1,000*l.* Under the 6th section the Court may, although the case be one for a value of under the sum of 1,000*l.*, and pending in a County Court, in the exercise of its discretion, order it to be tried here. There is an entire change in the law since the decisions to which I have been referred, and since the passing of the Merchant Shipping Acts, on the language of which these decisions were entirely founded, and it is no longer the case, as it was when those decisions were given, that this Court has no discretion to exercise as to whether it will entertain cases in which the value is under 1,000*l.* The Court has that discretion, and therefore, as I have already said, those cases, as it appears to me, become inapplicable alto-

gether as affording any guide to the Court in the present state of the law.

The 9th section says:—[His Lordship read the section, and proceeded.] It would suffice, perhaps, to have read those words of the statute to shew how entirely inapplicable the decisions under the Merchant Shipping Acts must be to the present state of the law. I agree with the argument of Mr. Cohen entirely, that looking to the dates which I have mentioned, and the proceedings of the defendants in this case, they must be construed as an agreement on their part that the case should be tried in the High Court of Admiralty, and if it were not so, I should hold that the Court having a discretion to exercise as to whether it would entertain this suit or not, the objection to its jurisdiction is taken at much too late a period, and I should not hesitate, if it were necessary, to make an order under the 9th section, that the case should proceed in this Court.

I should also observe that, if it were necessary to go into that part of the case, I am not satisfied upon the affidavits before me that (to use the words of the County Courts Admiralty Jurisdiction Act) "the value of the property saved does not exceed 1,000*l.*." I think the fair deduction from the statements in the affidavits made (and in that I include the affidavits on both sides) would be that it did exceed, though not by a very large amount, 1,000*l.* But I do not rest my judgment upon that fact. I rest it on the question of law, that in my judgment, taking into consideration the sections to which I have referred, this Court has jurisdiction in this matter; and looking to the conduct of the defendants in this case, I think I should not do justice unless I rejected their motion with costs, and granted the motion of the plaintiff.

*Decree according.*

---

Proctors—Fielder & Sumner, for plaintiffs; Dyke & Stokes, for defendants.

---

[IN THE PRIVY COUNCIL.]

1870. } THE QUEEN, *appellant*, v.  
 June 27, 28. } JAMES CARLIN, *respondent*.  
                   } THE SALVADOR.\*

*Foreign Enlistment Act* (59 Geo. 3. c. 69.  
 s. 7)—*Construction—Forfeiture of Ship.*

*The Foreign Enlistment Act* (59 Geo. 3. c. 69, s. 7) provides, that if any person shall, without the leave, &c., equip, furnish, or fit out, any ship or vessel with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, as a transport, &c., every such person shall be guilty of a misdemeanour, and every such ship shall be forfeited. The respondent's ship was fitted out as a transport for the service of certain persons in the island of Cuba, who had revolted from Spain, and had assumed to exercise government, and were conducting hostilities against Spain. It did not appear who the persons were or over what part of Cuba they assumed to exercise government:—Held, that inasmuch as the persons in whose service the ship was employed assumed to exercise government, there was a breach of the provisions of the Act, and the respondent's ship was liable to forfeiture.

This was an appeal from the Vice-Admiralty Court of the Bahamas dated the 13th of August, 1869, restoring a vessel called the *Salvador*, which had been seized by the Receiver General for a breach of the Foreign Enlistment Act, 59 Geo. 3. c. 69. s. 7 (1) under a warrant issued by His

\* Present—Lord Cairns, Sir J. Colville, Sir J. Napier, and Sir R. Phillimore.

(1) That if any person, within any part of the United Kingdom, or in any part of Her Majesty's dominions beyond the seas, shall without the leave and license of His Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out or arm, or attempt, or endeavour to equip, furnish, fit out or arm, or procure to be equipped, furnished, fitted out or armed, or shall knowingly aid, assist or be concerned in the equipping, furnishing, fitting out or arming of any ship or vessel with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state or potentate, or of any foreign colony, province or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any

NEW SERIES, 39.—ADMIRALTY.

Excellency the Governor of the Bahama Islands.

The cause commenced in the Vice-Admiralty Court on the 22nd of May, 1869, and on the 29th of May, 1869, an appearance, under protest, was entered for James Carlin, and a claim filed in his name for the vessel. These proceedings were followed by a protest, which raised the question, amongst others, whether a cause of forfeiture could be sustained under the sixth section of the Act, and the Judge ultimately decided that the causes of forfeiture must be confined to alleged breaches

foreign state, colony, province or part of any province or people, as a transport or store ship, or with intent to cruise or commit hostilities against any prince, state or potentate, or against the subjects or citizens of any prince, state or potentate, or against the persons exercising or assuming to exercise the powers of government in any colony, province or part of any province or country, or against the inhabitants of any colony, province or part of any province or country, with whom His Majesty shall not then be at war; or shall, within the United Kingdom, or any of His Majesty's dominions, or in any settlement, colony, territory, island or place belonging or subject to His Majesty, issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid, every such person so offending shall be deemed guilty of a misdemeanour, and shall, upon conviction thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the Court in which such offender shall be convicted; and every such ship or vessel, with the tackle, apparel and furniture, together with all the materials, arms, ammunition and stores, which may belong to or be on board of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of His Majesty's customs or excise, or any officer of His Majesty's navy, who is by law empowered to make seizures, for any forfeiture incurred under any of the laws of customs or excise, or the laws of trade and navigation, to seize such ships and vessels aforesaid, and in such places and in such manner in which the officers of His Majesty's customs or excise and the officers of His Majesty's navy are empowered respectively to make seizures under the laws of customs and excise, or under the laws of trade and navigation; and that every such ship and vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner, and in such Courts as ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the revenues of customs and excise, or of the laws of trade and navigation.

F

of the seventh section, and the protest was overruled so far as related to those causes of forfeiture, to which the claimant was ordered to appear absolutely.

On the 22nd of June an information on the part of the Crown was filed, claiming the forfeiture of the vessel, for a breach of the seventh section of the Foreign Enlistment Act, and witnesses were examined.

On the 6th of July, the said James Carlin, by his proctor, filed a plea denying the said allegations of the Advocate General, and alleging that neither he nor any other person or persons did, within Her Majesty's dominions, equip, furnish, or fit out, or aid or assist, nor was he or they concerned in the equipping, furnishing, or fitting out of the said steam ship *Salvador*, with intent or in order that the said ship should be employed as a transport or store ship in the service and for the purposes in the said information alleged, and he prayed restitution of the said ship.

No evidence was adduced on the part of the respondent.

The circumstances under which the *Salvador* was seized were as follows:—

The *Salvador* sailed from the port of Havanna, in the island of Cuba, on the 22nd of February, 1869, for Jacksonville.

On the 24th day of March, 1869, the administrator of the Government of the Bahama Islands issued a proclamation under the provisions of the Foreign Enlistment Act.

The *Salvador*, instead of going to Jacksonville, put into Key-West for repairs, and stayed there for about two months. She then sailed for Nassau, without any cargo, but having forty-two passengers on board, all Cubans. She arrived in the harbour of Nassau in the afternoon of the 7th day of May, and on the 8th of May the Receiver General went on board, and searched her. She had then nothing in her hold but coal, but he found some packages which had been sent on board without his permission, which contained coarse brown holland shirts and trousers, boots and gaiters, and one contained hat-bands and cockades; there were also seven rifles, and empty flannel cartridge bags for a six-pounder field piece. In another box two flags, one an English ensign and the

other blue and white stripes with a red triangle at the head, and a star in the centre. The hat-bands contained the same device as the flag.

The vessel was on the 10th of May cleared for St. Thomas, and she broke ground and left the harbour of Nassau at about 5 o'clock p.m.

It further appeared that after she had passed Fort Montague a short distance she again cast anchor, and that between her doing so and 6 o'clock on the morning of the 11th she received on board about eighty passengers from the shore, who were described as Cubans.

On the Receiver General proceeding in the cutter belonging to Her Majesty's ship *Royalist*, to detain the *Salvador*, and when within about 100 yards of her, the anchor was hove up, and the *Salvador* at the same time moved ahead; a shot was then fired across her bows to stop her, but she paid no attention to the signal and proceeded on her voyage, her decks apparently crowded with men.

The *Salvador* then went direct to Cuba, arriving there early on Friday morning, remaining there two days without making any attempt to go into port, some of the cases containing clothes, shoes, and boots were opened on board and the rifles taken ashore, and landed on the quays. All the passengers with the rest of the cargo were also landed, and some ten hours afterwards they had erected a battery and had thrown out skirmishers. The respondent himself stated this, and also that while they were at the quays seeing a Spanish man-of-war passing, they abandoned the vessel and were about to set her on fire, but as the man-of-war passed without seeing them, they again took charge of her.

The *Salvador* then sailed from the quays and arrived at Nassau on the following evening where she was immediately seized.

The cause was heard on the merits, and on the 13th of August, 1869, the acting Judge of the Vice Admiralty Court made a decree restoring the *Salvador*.

From this judgment the present appeal was brought.

The *Attorney General* (Sir R. Collier), the *Queen's Advocate* (Sir Travers Twiss), and Mr. Archibald, for the Crown.—It was

proved by the evidence that there was justifiable cause of seizure and forfeiture. If it be necessary that the vessel employed be in the service of a body of persons assuming to exercise the powers of government, the offence is still complete because the insurgents in Cuba not only assumed, but did in fact exercise government in Cuba or in a portion of that island. There was an offence under the provisions of the Foreign Enlistment Act, if the vessel was fitted out with the intention that she should be used either as a ship of war or as a transport against a power with whom the Queen is at peace. It is immaterial that the vessel is in the service of a body of persons. If she is employed for any of the forbidden purposes by a private person, the person who fits her out is guilty of a misdemeanour under the Act, and the vessel is liable to forfeiture.

They referred to the declaration of the King of Spain (14 Jan. 1819) (2), Proclamation, 1801 (3), and to Vattel (4).

No appearance was entered on behalf of the respondent.

LORD CAIRNS delivered the judgment of their Lordships.

This is an appeal from the decision of the Vice-Admiralty Court of the Bahamas, upon an information filed on behalf of the Crown before that Court under the Foreign Enlistment Act, with regard to the ship *Salvador*, and seeking her confiscation.

The clause in the Foreign Enlistment Act which has to be considered is the seventh. It has frequently been remarked that the interpretation of that clause is attended with some difficulty, mainly owing to the great quantity of words which are used in the clause; but endeavouring for the moment to set aside the verbiage of the clause, it is obvious that, in order to constitute an offence under it, five propositions must be established. In the first place, the ship, which in other respects is found to be acting within the meaning of the clause, must be acting without the leave and licence of the Sove-

reign of this country. That is the first element of the charge under the clause. The second is this: The ship must be equipped, furnished, fitted out or armed, or there must be a procuring, or an attempt or endeavour to equip, furnish, fit out, or arm the ship. The third is, that the equipping, furnishing, fitting out, or arming of the ship must be done with the intent or in order that the ship or vessel shall be employed in the service of some "foreign prince, state, or potentate, or some foreign colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people."

Then the fourth element in the charge is this: There must be an intent to employ the ship in one of two capacities, either "as a transport or store-ship against any prince, state, or potentate;" or "with intent to cruise or commit hostilities against any prince, state, or potentate." I pause for the purpose of observing that the words are not very happily chosen which represent her as being employed "as a transport or store-ship against any prince, state, or potentate;" but it is clear, open as the words may be to criticism, that the intent is that the ship should be employed in one of the two capacities I have mentioned, and not only so, but employed "against," that is in the way of aggression against some foreign prince, potentate, or state. This should be done, as I have already said, against some prince, state, or potentate, "or against the subjects or citizens of any prince, state, or potentate, or against the persons exercising or assuming to exercise the powers of government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country."

And the fifth element is, that this foreign state or potentate, and so on, should be one with whom the sovereign of this country should not then be at war.

Those are the five elements which go to make up the whole charge under the seventh clause.

Now, with regard to the first which I have mentioned, the absence of leave and

(2) 6 *State Papers*, p. 1,134.

(3) 4 *State Papers*, p. 488.

(4) B. iii. c. 8.

license on the part of her Majesty, no question arises.

With regard to the second, namely, that there must be an equipping, furnishing, fitting up, or arming, or a procuring, or an attempt to do so, no question can arise in this case when we read the evidence of Mr. Dumaresq, the Receiver General and Treasurer of the Island, who states the condition in which he found the ship, and the preparations made on board of her, which seem to their Lordships to amount to a fitting out or arming, or an attempt to do so, within the meaning of this clause. The learned Judge of the Vice-Admiralty Court seems to have entertained no doubt himself upon this part of the case.

I pass over the third element which I mentioned, for the moment, in order to say that upon the fourth and fifth heads to which I have referred there can also be no doubt entertained, as it seems to their Lordships; and here again, no doubt was entertained by the learned Judge of the Court below. It is quite clear that the ship was intended to be used as a transport or store-ship against a prince, state, or potentate with whom her Majesty is not now at war. She was to be used obviously as a transport or store-ship for the purpose of conveying to Cuba men and materials; and in that way to do the duty of a transport ship, and so to inflict injury upon the Spanish Government, who at that time were, and are now, the lawful authority having the dominion over Cuba. Here, again, no doubt was entertained by the learned Judge in the Court below, and no doubt could be entertained by anyone who looks at the evidence of Mr. Dumaresq, to which I have already adverted, and also the evidence of Mr. Butler, both of whom state what the report was which was made to themselves by Carlin, the master of this vessel, as to her conduct when she went to the coast of Cuba—how she landed all the men she had on board, plainly for the purpose of taking part in the insurrection which was going on in Cuba—how they abandoned the ship when they saw a Spanish ship of war in sight—how they were prepared to set fire to their ship if the Spanish ship approached them—and how afterwards, when they found that

they were unnoticed, they took possession of the *Salvador* again, and brought her back to Nassau.

That leaves uncovered only the third element of charge in this clause, and it is upon that alone that the learned Judge of the Vice-Admiralty Court entertained any doubt.

The third element is, that the ship must be employed in this way in the service of some "foreign prince, state, or potentate, or of any foreign colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people." It is to be observed that this part of the section is in the alternative. The ship may be employed in the service of a foreign prince, state, or potentate, or foreign state, colony, province, or part of any province or people; that is to say, if you find any consolidated body in the foreign state, whether it be the potentate, who has the absolute dominion, or the Government, or a part of the province or of the people, or the whole of the province or the people acting for themselves, that is sufficient. But by way of alternative, it is suggested that there may be a case where, although you cannot say that the province or the people, or a part of the province or people are employing the ship, there yet may be some person or persons who may be exercising or assuming to exercise powers of government in the foreign colony or state, drawing the whole of the material aid for the hostile proceedings from abroad; and therefore, by way of alternative, it is stated to be sufficient if you find the ship prepared or acting in the service of "any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people;" but that alternative need not be resorted to if you find the ship is fitted out and armed for the purpose of being employed in the service of any foreign state or people, or part of any province or people.

Upon that the observation of the learned Judge was this: "We have no evidence of the object of the insurrection, who are the leaders, what portion of Cuba they



have possession of, in what manner this insurrection is controlled or supported, or in what manner they govern themselves. How, therefore, can I say that they are assuming the powers of government in or over any part of the island of Cuba?"

Now, it appears to their Lordships that the error into which the learned Judge below fell, was in confining his attention to what I have termed the second alternative of this part of the clause, and in disregarding the first part of the alternative. It may be (it is not necessary to decide whether it is so or not) that you could not state who were the person or persons, or that there were any person or persons exercising or assuming to exercise powers of government in Cuba, in opposition to the Spanish authorities. That may be so: their Lordships express no opinion upon that subject, but they will assume that there might be a difficulty in bringing the case within that second alternative of the clause; but their Lordships are clearly of opinion that there is no difficulty in bringing the case under the first alternative of the clause, because their Lordships find these propositions established beyond all doubt: there was an insurrection in the island of Cuba; there were insurgents who had formed themselves into a body of people acting together, undertaking and conducting hostilities; these insurgents, beyond all doubt, formed part of the province or people of Cuba; and beyond all doubt the ship in question was to be employed, and was employed, in connexion with and in the service of this body of insurgents.

Those propositions being established, as their Lordships think they clearly are established, both by the evidence of Mr. Dumaresq and Mr. Butler, to which I have already referred, and further, by the evidence of the three witnesses, Loinaz Wells, and Mama, their Lordships think that the requisitions of the 7th clause in this respect are entirely fulfilled, and that the case is made out under this head as it is upon all other heads of the clause.

Their Lordships, therefore, will humbly recommend to Her Majesty that the decision of the Vice-Admiralty Court should be reversed, and that judgment should be

pronounced for the Crown, according to the prayer of the information.

It has been intimated to their Lordships, that on the 7th of February, there was a decree by their Lordships for the appraisement and sale of the vessel. She has been sold, and the net proceeds, 163*l.* 4*s.* 8*d.*, paid into Her Majesty's Commissariat chest in the Bahamas. The Colonial Government, it appears, have incurred expenses to the amount of 145*l.* 5*s.* 10*d.* in keeping the vessel while she was under arrest, and they claim to be reimbursed those expenses out of the proceeds of the sale. That, of course, will be proper, and if it is necessary to make that part of this order, it will be done.

Proctor—The Queen's Proctor for appellant.

[IN THE PRIVY COUNCIL.]

1870.\* } CHARLES BARRON AND ANOTHER,  
June 20. } *appellants, v. GEORGE CHARLES*  
                  *STEWART, respondent.*  
                  "THE PANAMA." \*

*Bottomry—Notice—Owner—Insolvency—Assignees.*

*In no case can notice of the intention to raise money by bottomry be dispensed with.*

*Until an owner has been judicially declared insolvent, he is entitled to notice. But if an owner has been judicially declared insolvent, the assignees are entitled to notice.*

This was an appeal from a judgment of the Judge of the High Court of Admiralty of England.

The cause in which the appeal arose was instituted to obtain payment of two bottomry bonds indorsed to the appellants, and dated, respectively, the 9th of October, 1868, and the 2nd of December, 1868. The facts were as follows—

On the 14th of April, 1868, the appellants chartered the *Panama*, belonging to Edwin Fincham, and commanded by John Mantle, for a voyage from Liverpool to Cuba and back. By the terms of the

\* Present—The Master of the Rolls (Lord Romilly), Sir J. Colvile, and Sir J. Napier.

charter party, freight was to be paid only on the homeward cargo, and a sum of 500*l.* was to be advanced on sailing from Liverpool, and a further sum not exceeding 250*l.* at Cuba for ship's disbursements, if required.

The *Panama*, with a cargo of coals belonging to the appellants, sailed from Liverpool on the 14th of May following; but having met with bad weather, the master, after throwing overboard about thirty-five tons of coals, put into Queens-town, and there sold about forty tons more, and remitted the proceeds of sale to the owner, but the amount was not paid over by him to the charterers, the appellants. On the 27th of May the *Panama* left Queenstown and arrived at Cardenas on the 27th of July following, consigned to the appellants' agents, Messrs. Finlay & Co., of Havanna, by whom the vessel was chartered to go round to Trinidad de Cuba, a port on the south side of Havanna, and there take in a cargo of timber for England. At Cardenas and Trinidad de Cuba divers sums of money for disbursements, amounting together to about 500*l.*, were advanced by Messrs. Finlay & Co., on behalf of the appellants, for the use of the ship. 250*l.*, part of the said sum of 500*l.*, were advanced in pursuance of the stipulation in the charter party, and for the further sum of 250*l.* the first bottomry bond was given at Trinidad de Cuba, and amounted with maritime premium and other expenses to the sum of 318*l.* 16*s.* 0*d.* On the 12th of October following, the *Panama* left Trinidad de Cuba for London, but meeting with tempestuous weather, and having lost some of her sails and damaged some of her stores, put into Cardenas. She was there surveyed, and the master, being without funds or credit, threatened to sell a portion of the cargo, and thereupon Messrs. Finlay & Co., as agents for the appellants, and under an agreement for bottomry, displaced the master, appointed a new master, and advanced the necessary disbursements and expenses for the *Panama*. The disbursements and other expenses amounted to the sum of 378*l.* 3*s.* 0*d.*, and on the 2nd of December, 1868, a bottomry bond was accordingly signed by the master for that amount, together with

118*l.* 9*s.* 0*d.* maritime premium, and the sum of 250*l.* previously advanced to the master. The *Panama*, under the command of the new master, sailed from Cardenas on the 6th day of December following, and arrived at London on the 4th of January, 1869.

The owner of the *Panama* did not dispute the validity of the bonds, but the validity of the bonds was contested by the respondent, a mortgagee, and the bonds were referred to the Registrar of the High Court of Admiralty, to report the amount due upon the bonds, but without reference to any question as to their validity.

The Registrar reported that all the charges were quite proper, that the bottomry premium was not excessive, and that he was not aware that any of the items could have been struck out. He also reported that the second bond was invalid by reason that the bondholder had given the owner no previous notice of the execution of the bond.

Against this report the appellants appealed to the Judge, and it was agreed between the parties that the Judge should decide the question of the validity of the bond.

The appeal was heard, and on the 30th of July, 1869, the learned Judge of the Admiralty Court pronounced against the validity of the bond, on the ground that the appellants had not communicated with the owner of the vessel before the bonds were executed.

From this judgment the present appeal was brought.

The case in the Court below is reported 30 Law J. Rep. (N.S.) Adm. 67.

*Mr. Butt* and *Mr. Pritchard*, for the appellants.—The question of communication with the owner is one which goes only to the authority of the master to execute the bonds, and the evidence in this case shews that the circumstances in which the master was placed authorised him to contract a loan on bottomry. Under the circumstances, the execution of the bonds, without waiting for communication with the owner, was the right course for the master to take, regard being had to the interests of his owner. The conduct of

the owner amounted to a ratification of the master's act in executing the bonds. But the owner in this case was insolvent; it was therefore useless to give notice to the owner.

*Mr. Milward* and *Mr. Clarkson*, for the respondent.—Notice to the owner must, under any circumstances, be given before bottomry. The master did not communicate with the owner before resorting to bottomry in this case. It is said that it was unnecessary, because the owner was insolvent. If that was the case, the assignees should have been communicated with. At all events, the appellants ought to have communicated with the respondent before directing their agents to take a bond of bottomry. The bond was therefore invalid. It is, however, denied that the owner was insolvent; an owner cannot be said to be insolvent till he is adjudicated bankrupt.

LORD ROMILLY delivered the judgment of their Lordships.—The short statement of the case is this: The appellants chartered a vessel; she got into difficulties and was obliged to go to Cardenas, in Cuba, on the 12th of October, 1868. When she got there, the master attempted to raise money and found that he could not do it, and the agents of the charterers in Cuba telegraphed to Liverpool on the 24th of November to ask what they were to do in the matter. The telegraphic message which they sent is striking, upon the only point on which their lordships' opinion is asked, for it is to this effect: "*Panama* wants 200*l.* to clear; also 160*l.* claimed by *Mantle* for wages; are ready to advance all, but he must leave vessel to captain appointed by consul. See owner. Answer." Well, there is an express direction by the agents at Cardenas to the charterers to see the owner, and to take care what answer shall be given. The telegraphic message in answer is sent on the following day:—"Do best—our interest; appoint new master; secure advance; bottomry." The agents were quite ready to advance the money; but, nevertheless, the charterers informed them that they must appoint a new master and raise the money by bottomry. Instead of complying with the request, made by the

agents at Cuba, to see the owner, the appellants do nothing of the sort, although the owner was in the same town, and apparently attending his office every day, and they might perfectly well have seen him.

Now, their Lordships do not intend to lay down that it is necessary, if the owner cannot be served with notice, that notice must be given to a mortgagee; that question does not arise; but what they wish to express is, that it was absolutely necessary in this case to give notice to the owner. The excuse given here is that the owner was insolvent. Their Lordships think that this is not technicality, but a matter of substance, and that it is important that the owner should receive notice, in order to enable him to raise money for the purpose of rescuing his vessel from its difficulties at a smaller amount of premium than the maritime premium would necessarily entail.

The excuse alleged is that he was insolvent. Their Lordships think this excuse fails. In the first place, either he had been insolvent and declared so judicially, or he had not. If he had been declared so judicially, the ownership in the vessel is transferred to other persons, and those persons are the persons who ought to receive notice; and the assignees would be the persons who might think it for the benefit of the creditors of the estate that they themselves should supply or obtain the money required.

Neither do their Lordships think that the question raised respecting the demurrage and the expense afford any excuse in this case; because, if the money were obtained in Liverpool, a telegraphic message sent to Cardenas would have caused the money to be paid in twenty-four hours.

It resolves itself, therefore, solely into a question of insolvency, and whether insolvency excuses the giving of notice, there having been no judicial insolvency. Their Lordships are of opinion that if they were to lay down this as a principle, it would produce a serious evil. In the first place, it is very difficult to tell whether a person is insolvent. Is it to depend on the ultimate result of whether he was actually insolvent at the time, and that the opinion of the charterer was correct?

The fact of whether a man is insolvent or not may depend upon the result of a single item in a contested account, which may involve a question of difficult legal decision. Insolvency finally may depend upon the expense of legal proceedings, and the time and manner of realising the assets. These would have to be taken into account.

Their Lordships are of opinion that until a person has been judicially declared insolvent, the owner is the person to receive notice, that he may be able to extricate himself from these difficulties, and that he should duly receive notice of the intention to raise money by bottomry. In case he is judicially declared insolvent, the ownership rests in other persons; but that in no case can a communication of notice be dispensed with.

Their Lordships, therefore, think that the judgment of the Court below is correct, affirming that of the Registrar; and their Lordships are of opinion that this appeal ought to be dismissed, with costs.

Attorneys—Wright and Venn, for appellants;  
Clarkson, Son & Greenwell, for respondent.

1870.  
Jan. 7, 11, } THE LADY OF THE LAKE.  
& 18.

*Account—Co-owners—Right to sue after ceasing to be Owner.*

*One who has parted with his shares in a vessel may nevertheless sue for the accounts as to her earnings while he was a co-owner. Motion to reject the petition dismissed, but without costs.*

The petition in this case alleged (amongst other things) that on the 18th day of July, 1868, the plaintiff being then sole owner of *The Lady of the Lake*, sold to the defendant thirty-two sixty-fourth shares of the vessel, and that the vessel afterwards sailed under command of the defendant on a foreign voyage, and returned on the 9th day of August, 1869. That the plaintiff on the 31st day of August following sold the other thirty-

two sixty-fourth shares to another person. The petition prayed for a reference of the accounts between the parties, a sale of the defendant's shares, and payment to the plaintiff of the amount due to him, with costs.

*E. C. Clarkson*, for the defendant, moved the Court to reject the petition. The plaintiff has no *persona standi*, inasmuch as the statute confers jurisdiction only in the case of persons who are co-owners at the time of the institution of the suit; and if it should appear that the plaintiff was indebted to the defendant, there would be no shares in Court to answer a decree in favour of the defendant. In proceedings of this kind there must be mutuality—*Seton on Decrees*, 3rd edition by Harrison and Leach, c. 2. s. 1. page 97.

*Cohen*, contra.—A master may sue for wages after he has ceased to be master, and resigned his authority over the vessel, and the owner of damaged goods may institute a suit for damage to cargo after he has parted with the damaged goods. One part-owner therefore may maintain an action against another part-owner for account, in respect of matters which took place while the relationship of co-owners existed between them.

*Clarkson*, in reply.

*Our. adv. vult.*

Judgment was given as follows on Jan. 18—

SIR R. J. PHILLIMORE.—This is a motion by the defendant to reject the plaintiff's petition.

The petition states that the plaintiff was the sole owner of *The Lady of the Lake*; that he sold half the shares in the vessel to the defendant on the 18th of July, 1868; that the defendant sailed the vessel under his command on a voyage from Sunderland to Brazil; that she returned with a homeward cargo on the 9th of August, 1869. The plaintiff prays that the 8th section of 24 Vict. c. 10 may be put in force on his behalf, and that this Court will decide the questions and settle the accounts outstanding between him and the defendant as co-owners. But the plaintiff in his petition also states that on the 31st of August, 1869, he sold all his shares; that is, the other half of the

vessel, to one William Snowball, and it is upon this averment that the defendant contends that the whole petition ought to be rejected, inasmuch as the plaintiff had no *locus standi* under the statute, which, it is contended, only confers jurisdiction upon the Court in the case of persons who are co-owners at the institution of the suit.

The 8th section is as follows:—"The High Court of Admiralty shall have a jurisdiction to decide all questions arising between the co-owners, or any of them, touching the ownership, possession, employment, and earnings of any ship registered at any port in England or Wales, or any share thereof, and may settle all accounts outstanding and unsettled between the parties in relation thereto, and may direct the said ship, or any share thereof, to be sold, and may make such order in the premises as to it shall seem fit."

It was argued on behalf of the defendant that neither according to the letter, nor according to the spirit of this enactment, had the Court jurisdiction in this case; not according to the letter, because the plaintiff had ceased to be a co-owner; not according to the spirit, because it was the duty of the Court to adjust the accounts between the co-owners; and that if it should turn out in this case that the plaintiff was indebted to the defendant there were no shares of the plaintiff brought into Court to answer a decree in favour of the defendant, and the practice of the Court of Chancery upon questions of this kind was referred to. To this it was replied that the jurisdiction of the Court was not determined by the *status* of the plaintiff at the time when the suit was instituted, but by his *status* at the time when the cause of action accrued. Thus under the 6th section, the owner or consignee of the cargo at the time when the damage was done to it might bring this suit, though he had subsequently parted with his interest in it; and the mariner might bring his claim for his wages as master, though he had ceased to discharge the duties of, or had been discharged from that office. In the other sections of the Act, the 4th, 5th, and 6th, the words "at the time of the

NEW SERIES, 39. - ADMIRALTY.

institution of the cause," are inserted, which are wanted in the 8th section, and were inserted in these other sections for the protection of the defendant.

In the case of the *Idas* (2), my learned predecessor decided that, under the 8th section, this Court might order an account to be taken between co-owners relating to matters which occurred before the date assigned for the Act to come into operation, and also relating to a ship lost before the institution of the cause; and it will be difficult to maintain, according to the argument of the defendant in this case, that there were any co-owners after the ship was lost. I am of opinion that I am not prevented by the letter of the statute from taking cognizance of this cause; nor will my exercise of jurisdiction be at variance with the spirit of the enactment, for if the defendant in his answer should claim a balance in his favour, I shall, in pursuance of the provision in the section, make the order in the premises which I think fit, and which in this case will be, that bail to the amount of the other moiety of the shares be given by the plaintiff before the accounts are referred to the registrar for his investigation and report. As this is the first time in which this question has been raised before me, I shall make no order as to the costs of this motion.

*Decree accordingly.*

Proctors—Clarkson, Son & Greenwell, for plaintiffs; Rothery & Co., for defendants.

ADMIRALTY. }  
1870.  
April 26. }

THE JOHANNES.

*Damage—Increase of Amount of Action.*

*In a cause of damage the defendants admitted their liability, and before the reference to ascertain the amount of damage had taken place the plaintiffs moved to amend the præcipe to institute the cause by increasing the amount of the action. The motion was granted on the payment of the defendant's costs.*

(2) Br. & Lush, 65.

G

This was a cause of damage by the owners of the barque *Linda* against the foreign barque *Johannes*.

The collision took place on December 30 last, and the vessel was arrested on the 8th of January following, when the repairs of the *Linda* had only just been commenced, and as the damage was then estimated at about 700*l.* the action was entered in the sum of 1,000*l.*, for which bail was subsequently given. The defendants admitted their liability, and consented to a reference as to the amount, but no reference had as yet taken place. The repairs were completed on the 4th of March, and amounted to 1,342*l.* 6*s.* 8*d.*

Clarkson, for plaintiffs, moved the Court to allow the præcipe to institute the action to be amended by increasing the amount to 1,500*l.*—*The Meander* (1), *The Hero* (2).

Deane, for defendants.—The admission of liability by defendants and consent to a reference are equivalent to a judgment, and this application after judgment should be refused—*The Kalamazoo* (3). The liability of the bail cannot be increased—*The Duchesse de Brabant* (4), *The Mellona* (5).

Clarkson, in reply.—The plaintiffs do not ask to extend the liability of the bail, but only to increase the amount of the action.

SIR R. PHILLIMORE.—I give the plaintiffs leave to amend the præcipe to institute by increasing the amount in which the suit is instituted from 1,000*l.* to 1,500*l.* As Mr. Clarkson is content with this, and does not ask for further security than that already given, it is unnecessary for me to decide whether the plaintiffs are entitled to have fresh bail. The defendants must have their costs of this motion.

Attorneys—Ingledew & Ince, for plaintiffs; Fielder & Sumner, for defendants.

1870.  
July 21, 22. }

THE SAMUEL LAING.

*Appeals from County Courts—Further Appeal to the Privy Council—General Rules.*

*In appeals from County Courts, the High Court of Admiralty will not generally allow further appeals except:—1. When the law applicable is doubtful or novel; 2. When the Court has doubts as to the correctness of its decision; 3. When the pecuniary interests at stake are large.*

This was an appeal from the decision of the judge of the City of London Court, in a cause of damage in respect of a collision between the sailing vessel *Moneta* and the screw steamship *Samuel Laing*, in the river Medway, in the month of March, 1870. The learned judge of the Court below held that the *Samuel Laing* was to blame for the collision, and decreed accordingly. From this decision the owners of the *Samuel Laing* appealed, and the Court reversed the decision, with costs. The respondents applied for leave to appeal to the Privy Council.

Butt, E. C. Clarkson, and Steavenson for the appellants.

Dr. Deane and Webster for the respondents.

*Cur. adv. vult.*

SIR R. J. PHILLIMORE.—In this case I was asked by the respondents to allow an appeal to the Privy Council from my judgment. I declined to do so, and, on reflection, I adhere to that determination; but as the appeals to this Court appear likely to increase, I have thought it expedient to state the general principles which, in my opinion, ought to govern the exercise of the discretion confided to this Court by the legislature. It appears to me, in the first place, that the legislature intended the granting of an appeal to be the exception and not the rule. The object of the County Courts Admiralty Jurisdiction Acts (31 & 32 Vict. c. 71, and 32 & 33 Vict. c. 51) and similar statutes, is to prevent long and costly litigation upon questions where the pecuniary interest at stake is small. They carry the principle of *interest Reipublicæ ut sit finis litium* to

(1) Br. & Lush, 29.

(2) Br. & Lush, 447.

(3) 15 Jurist, 886.

(4) Swabey, 264.

(5) 3 W. Rob. 16; s. c. 6 Notes of Cases, 62.

a considerable extent. The statute which I am now considering, by confining the appeal *ex debito justitiæ* to one Court, and giving the judge of that Court a discretion as to allowing a further appeal, contemplated that he would keep this principle in view. I have considered the class of exceptional cases as to which I ought to exercise this discretion in favour of a further appeal, and without binding myself to an invincible adherence to the opinion which I am about to express, I think that in the following cases only I ought to allow an appeal:—Where the law is doubtful or novel in its application; where the facts are such as to leave a substantial doubt on the mind of the Court whether the conclusion at which it has arrived be right; and where the pecuniary interest—a case which may happen under the provisions of the statute—is large. In all other cases I think that, in accordance with the principle on which the County Court Jurisdiction Act is founded, and with the presumable intention of the legislature, I ought not to allow a further appeal.

Attorneys—Hillyer & Fenwick, for appellants;  
T. Cooper for respondents.

1870. }  
Feb. 15, 25. } THE PRINCESS ROYAL.

*Damage to Cargo—Fraud and Misconduct of Master—Right to sue the Ship—*  
24 Vict. c. 10. s. 6.

The petition alleged that a master who was also owner of a vessel had wilfully, improperly and fraudulently injured and abandoned her. She was subsequently taken into port by salvors, and the plaintiffs, the owners of cargo, were compelled to pay salvage to get possession of their cargo, and its delivery was consequently delayed. The master and vessel were both foreign:—Held, that the allegation “fraudulently” should be struck out of the petition, that the Court had jurisdiction over the cause under 24 Vict. c. 10. s. 6, and that the plaintiffs might sue the ship in the Admiralty Court for constructive damage to cargo.

It was alleged in certain articles of the petition in this cause that the defendant was owner and master of the *Princess Royal*, and whilst on a voyage from Elsinore to Hartlepool, had wilfully and fraudulently cut down and injured parts of the said vessel, and abandoned her upon the high seas. That she was taken possession of as a derelict by the *John and Alice Brown*, of Whitby, and that the plaintiffs as owners of cargo had to pay a large sum for salvage services before they could get possession of their cargo.

*Phillimore*, for the defendant, moved the rejection of the articles.

1. There is no jurisdiction under 24 Vict. c. 10. s. 6, under which, if at all, the Court would have jurisdiction. The “breach of contract and breach of duty” must relate to actual damage of goods—*The Kasan* (1), *The Norway* (2), *The Tigris* (3), *The Santa Anna* (4).

2. This is a matter of felony, and therefore not the subject of a civil suit—7 Will. 4. and 1 Vict. c. 89. s. 6—*Cox v. Paxton* (5), *Stone v. Marsh* (6).

3. In any case the property is not liable—*The Ida* (7), *The Waldo* (8).

*E. C. Clarkson*, for the plaintiffs.

1. There has been breach of duty or contract, or both, and damage, and therefore the Court has jurisdiction—*The Dantzic* (9), *The Bahia* (10), *The Felix* (11).

2. The defendant is not amenable to the criminal law of this country. The ship is Swedish, and the offence took place on the high seas—*The Queen v. Anderson* (12).

*Phillimore*, in reply.

*Cur. adv. vult.*

- (1) Br. & L. 1; s. c. 32 Law J. Rep. (n.s.) Adm. 97.
- (2) Br. & L. 226.
- (3) Br. & L. 38; s. c. 32 Law J. Rep. (n.s.) Adm. 97.
- (4) 32 Law J. Rep. (n.s.) Adm. 198.
- (5) 17 Ves. 329.
- (6) 6 B. & C. 564.
- (7) 1 Lush. 6.
- (8) *Daveis' American Rep.* 161.
- (9) Br. & L. 102; s. c. 32 Law J. Rep. (n.s.) Adm. 164.
- (10) Br. & L. 61.
- (11) 37 Law J. Rep. (n.s.) Adm. 48; s. c. Law Rep. 2 A. & E. 273.
- (12) 38 Law J. Rep. (n.s.) Mat. Cas. 12; s. c. Law Rep. 1 C.C.R. 161.

SIR R. PHILLIMORE.—In this case I have to consider certain objections which are taken to portions of a petition in a cause instituted under the 6th section of the Admiralty Court Act, 1861.

The petition states in substance that on the 3rd of September, 1869, Christian Hansen shipped a cargo of battens on board a vessel, which it appears was Swedish, lying in the port of Hernösand; they were to be carried according to the terms specified in a bill of lading to Elsinore for orders. The vessel arrived at Elsinore on the 26th of September, where she received orders to sail to West Hartlepool, to which place she sailed on the 28th of September. The vessel has been sold under the authority of this Court, and the proceeds of the sale are now in the registry.

What befell the vessel on her voyage to West Hartlepool is stated in the following articles of the petition, which were those objected to:—

The 8th article states that “whilst in the prosecution of the said voyage from Elsinore to West Hartlepool, the defendant and the crew on board the said vessel wilfully, improperly and *fraudulently* cut down, destroyed, injured, and endangered parts of the said vessel, her tackle, apparel, and furniture.”

The 9th article states that “having damaged and injured the said ship as aforesaid, the defendant and his crew wilfully, improperly, and *fraudulently* abandoned the vessel and cargo on the high seas.”

The 10th article states “that about 9 a.m. of the 4th of October, 1869, the said vessel and cargo, having been abandoned as aforesaid, were found on the high seas and taken possession of as a derelict by the master and crew of *The John and Alice Brown*, of Whitby, and by them towed into the port of Middlesborough, on the 9th day of the same month.”

The 11th article states that “by reason of the premises, the plaintiffs were compelled to pay and did pay a large sum to the owners, master, and crew of the said ship or vessel *John and Alice Brown*, for and in respect of their salvage services, before they could get possession of the said cargo of battens; the delivery where-

of to the plaintiffs was also by reason of the premises aforementioned considerably delayed, whereby the plaintiffs sustained great loss and damage.”

The first objection taken to the admissibility of these articles is, that the Court has no jurisdiction under the statute 24 Vict. c. 10. s. 6, inasmuch as there is no allegation that there has been actual damage to cargo, nor that the cargo has been lost, nor that the master has refused to deliver the cargo. And moreover, that in this case the alleged detention of the cargo was a detention by third parties claiming by title of possession in a derelict, and not a detention by the master or his agent. And in support of this objection, the cases of *The Tigris* (3) and *The Norway* (2) were cited to shew the utmost extent to which the Court had gone; and *The Santa Anna* (4), as marking the limit which the Court had set to its jurisdiction in cases of “breach of duty or contract” under the statute. But to these, cases were added in reply, and it may be convenient to mention them now: *The Dantzic* (9), in which the Court exercised jurisdiction over a claim for short delivery of cargo, as per bill of lading, in a British port, though the goods not delivered were not in fact carried into port. *The Bahia* (10), in which the plaintiffs were the owners of certain corn which was laden on board *The Bahia* at New York, under a bill of lading to be delivered at Dunkirk in France; that on the voyage the master put into Ramsgate, and landed the cargo, and refused either to carry on to Dunkirk or to give delivery at Ramsgate. *The Wilhelm*, in which the plaintiff complained that the master delayed the prosecution of his voyage, and that owing to his negligence the cargo did not reach the port of destination until an unduly late period, and in which the Court pronounced for the damage, and made the usual reference to the registrar and merchants, July 25th, 1865. This case has not been reported. *The Felix* (13), decided by myself, in which the plaintiffs obtained damages because the master did not obey the order of the con-

(13) 37 Law J. Rep. (N.S.) Adm. 48; s. c. Law Rep. 2 Adm. 273.



signee to discharge his cargo in a particular dock.

A second objection to these articles is that the matters pleaded in them amount to a charge of felony, and that a Court of civil judicature must refuse to entertain such a cause until a criminal Court has adjudicated that a felony cannot be the foundation for a civil action. For this last position reliance was placed upon *Cox v. Paxton* (5) and *Stone and Marsh* (6), and *Ex parte Wm. Elliott* (14), and the statute 24 & 25 Vict. c. 97. s. 43, re-enacting s. 6 of Will. 4. and 1 Vict. c. 89 (repealed by 24 & 25 Vict. c. 95), was cited to shew that the charges contained in the articles were barratrous and felonious.

The third and last objection was that this being a proceeding *in rem*, and not *in personam*, the ship, or *res*, was not liable for acts of the master done without the scope of his duty—*The Waldo* (8), and that this position was not affected by the fact that the master was (as pleaded in the 2nd article) the sole owner; and that this Court had refused to allow a cargo to be arrested in a case in which the same person was owner of the ship and of the cargo—*The Victor* (15). It was also urged that innocent liens on the ship, not at present opposed, might be injured by these proceedings against the ship.

These various points in the case have been well argued on both sides, but inasmuch as I am about to say why I think the articles are substantially admissible in their present form, it is not necessary to state the arguments in reply to which I in great measure accede, as fully as, in a case somewhat novel, I have thought it right to state the objections. The real ground of an action in this suit is stated in the 12th article of the petition, which is as follows:—"The said cargo was never delivered by the defendant to the plaintiffs in accordance with the terms of the said bill of lading, although such non-delivery was not occasioned by any of the perils in the said bill of lading excepted." Assuming, as I am bound to do at present, the facts to be correctly stated in

the other article, there is no doubt that the averment contained in this article is true. The owners have gotten the goods at a port other than that specified in the contract, and not from the master, but from third parties, namely, the salvors. Here, then, is a breach of contract relating to the goods, whereby the owners have been damnified. I am of opinion that it is not necessary that the damage should be actual, in order to found the jurisdiction of the Court. It may be of that constructive character resulting from wrong or improper delivery or detention, or the like causes; and in this opinion I am fortified as well by the precedents to which I have referred as by the natural construction of the language of the statute; and it appears from the articles objected to, that, although the detention of the cargo was not immediately the act of the master, inasmuch as it had passed out of his hands into those of third parties who had a lien upon it, yet that the detention was the consequence of previous misconduct on the part of the master, through which it passed into the possession of these third parties. The articles which plead these facts are admissible according to the rules of this Court, as shewing the history of the transaction and the continuing liability of the master. I will now deal with the objection that the action ought to have been *in personam*, and not *in rem*, that the master acted beyond the scope of his duty, and that in condemning the *res*, I may be injuring innocent lienors which do not appear. I am of opinion that the petitioners have a right under the statute to institute this suit *in rem*, and that the owner of the ship is responsible to the shipper for the loss or damage alleged in this case. I do not think that the objection that the act of the master did not bind the owner is well founded, nor does the case of *The Waldo* (8), which is well deserving of study, support that proposition. The master in that case had been made by the shipper the consignee of the cargo. The case of *The Ida* (7) was of a more peculiar character; the judgment in it was founded on a want of jurisdiction in the Court, and in the judgments no reference is made to the argument that the owner was not liable

(14) 2 Deacon's Cases in Bankruptcy, 179.

(15) Lush. 72, 76; s. c. 29 Law J. Rep. (N.S.) Adm. 110.

because the master exceeded the scope of his duty; as to the possible existence of secret liens on this ship, the answer is that, if there be such, the possessor of them is apprised by the forms of this Court that he may come in and defend his interest, and obtain for his claims their due priority.

With respect to the objection that they contain a charge of felony, in which the action for the civil wrong is merged, I felt at first some difficulty upon this point, and I am certainly not inclined unnecessarily to entangle myself in this question of merger, which is, perhaps, not in principle always very satisfactorily explained, or in practice always very consistently applied by the authorities at common law. It is true that, although the master be sole owner, the acts alleged would probably render a British subject guilty of felony under the statute 24 & 25 Vict. c. 97, and it has been suggested that although the vessel be a foreign vessel, and the master a foreigner, yet as the offence was committed *super altum mare*, this Court of maritime international law ought to hold itself less fettered as to criminal jurisdiction in this matter than a common law Court, which would in these circumstances be competent to take cognizance of this offence—*The Queen v. Lopez and Others* (16); *The Queen v. Anderson* (12). I must not be understood as assenting to this argument, but I shall direct the word “fraudulently” to be struck out in both the articles. It is not necessary for the case of the petitioner in this Court, and it introduces an issue which might unnecessarily complicate and increase the costs of the suits. With this alteration I admit the petition.

---

Proctor—H. G. Stokes, for plaintiffs;  
Attorney—C. M. Barker, agent for Turnbull & Bell, West Hartlepool, for defendant.

---

1870. }  
May 31. }  
June 14. }

THE DOWSE.

*County Court—Admiralty Jurisdiction—Necessaries.*

*County Courts exercising Admiralty jurisdiction cannot, as such, entertain a claim for necessaries supplied either to a vessel in her own port, or when an owner of the vessel is domiciled in this country.*

*Semble, that the High Court of Admiralty may exercise an appellate jurisdiction in a matter over which it has no original jurisdiction.*

*Semble also, that it has an appellate jurisdiction over the Court of Passage at Liverpool.*

This was an appeal from the decision of the Judge of the Court of Passage in the borough of Liverpool.

In that Court a cause of necessaries had been instituted on behalf of the Muntz Metal Company against the vessel *Dowse* for necessaries supplied, to the value of 146l. 12s. 7d. The answer of the defendants pleaded amongst other pleas:—

1. At the time when the alleged necessaries (the subject matter of this suit) were supplied to the said vessel, the said vessel belonged to the port of Liverpool.

2. At the time of the institution of this suit, there was domiciled in England a certain person who was, at the time when the said alleged necessaries were supplied, an owner or part owner of the said vessel.

3. At the time when the said order was given, the defendants and Stewart, a mortgagee of the vessel, were resident and carrying on business at Liverpool aforesaid.

These articles were objected to as irrelevant, and the objection was sustained by the Judge of the Court of Passage, who decided that the Court had jurisdiction on the subject matter of the claim; from this decision the plaintiffs appealed.

*Gully* for the appellants.

*Potter* for the respondents.

*Cur. adv. vult.*

SIR R. PHILLIMORE.—The question is as to the true construction of 31 & 32 Vict. c. 71, the title of which statute is, “An Act for conferring Admiralty Jurisdiction upon the County Courts.” I shall observe that no question has been raised before

me as to whether, under the 26th section of that statute, an appeal lies from the Court of Passage to the High Court of Admiralty. I am inclined, however, to think that the appeal does lie; and that the Court of Passage is in this respect in the same category as County Courts having Admiralty jurisdiction.

It has been contended that there is no limitation which narrows the construction of the words "any claim" (1), and though it is admitted that the High Court of Admiralty would have no original jurisdiction in this matter, that it has an appellate jurisdiction, and also that it might, under the authority of the 6th section (2), order the cause to be at once transferred to this Court, and so, in fact, exercise original jurisdiction.

There is no doubt that the High Court of Admiralty has exercised, and may exercise, an appellate jurisdiction in a matter over which it has no original jurisdiction. The High Court of Admiralty was formerly the Court of Appeal from revenue cases decided in the Colonial Admiralty Courts; and under 32 & 33 Vict. c. 51, it has an appellate jurisdiction as to claims arising out of agreements for the use or hire of a ship, and the carriage of goods in a ship, as to which there was no original jurisdiction.

But I think I must construe the 31 & 32 Vict. c. 71, independently of these considerations. That statute only professes to confer, both by its preamble and its

2nd section, Admiralty jurisdiction upon certain Courts; and then by the 3rd section enacts that a "Court having Admiralty jurisdiction" shall try and determine any claim for necessities—that is to say, in my opinion, any claim for necessities triable by a Court having Admiralty jurisdiction.

Under the old law—previously to the statutes 3 & 4 Vict. c. 65 and 24 Vict. c. 10—the Court had no jurisdiction over a claim for necessities—*The Neptune* (3). By the 6th section of the former statute such jurisdiction was conferred on it in cases of claims for necessities supplied to any foreign ship or sea-going vessel; and by the 5th section of the latter statute further jurisdiction was conferred on it over any claim for necessities, subject to two limitations—first, that they should have been supplied elsewhere than at the port to which the ship belonged; and, secondly, that at the time of the institution of the cause no owner or part owner of the ship was domiciled in England or Wales. I think the term "Admiralty jurisdiction" in 31 & 32 Vict. c. 71, must be construed with reference to these limitations; and the correctness of this construction is confirmed by a reference to the title of the last County Court Admiralty Jurisdiction Act, 32 & 33 Vict. c. 51—"An Act to amend the County Courts (Admiralty Jurisdiction) Act, 1868, and to give Jurisdiction in certain Maritime Causes."

I am glad to find that the Court of Common Pleas has put the same construction upon the statute in question in the case of *Everard v. Kendall* (4).

I must decide, therefore, that the articles in the answer which took objection to the jurisdiction of the Court were rightly pleaded, and I must reverse the decision of the learned Judge of the Court below, which ordered them to be struck out.

Attorneys—Chester & Urquhart, agents for I. H. E. Gill, Liverpool, for appellants; Gregory, Rowcliffes & Rawle, agents for Duncan Squarey & Co., Liverpool, for respondents.

(1) The 3rd section enacts that—

"Any County Court having Admiralty jurisdiction shall have jurisdiction, and all powers and authorities relating thereto, to try and determine, subject and according to the provisions of this Act, the following causes (in this Act referred to as Admiralty causes):—

"1. As to any Claim for Salvage.—Any cause in which the value of the property saved does not exceed one thousand pounds, or in which the amount claimed does not exceed three hundred pounds;

"2. As to any Claim for Towage, Necessaries, or Wages.—Any cause in which the amount claimed does not exceed one hundred and fifty pounds."

(2) "The High Court of Admiralty of England on motion by any party to an admiralty cause in a County Court may, if it shall think fit, with previous notice to the other party, transfer the cause to the High Court of Admiralty," &c.

(3) 3 Knapp, 94.

(4) 39 Law J. Rep. (N.S.) C.P. 234.

1870.  
May 31, }  
June 4, }  
July 12. }

## THE NORMANDY.

*Damage — Limitation of Liability — Vessel not under Arrest — Injunction to restrain Actions at Common Law—24 Vict. c. 10. s. 13.*

*The N. and M. came into collision, and the M. was sunk. Cross causes of damage were instituted, but had not been heard, nor the liability for the collision determined, but the owners of the N. paid into Court the amount of their liability as limited by statute:—Held, that the Court had jurisdiction in a suit for limitation of liability, even though the N. had been sunk, and therefore could not be arrested, notwithstanding 24 Vict. c. 10. s. 13; that the Court could grant an injunction to restrain actions at common law in respect of the same collision; and that actions at common law for the loss of goods damaged by the collision might be restrained, even though the goods were to be carried partly by sea and partly by land.*

This was a cause of limitation of liability. Cross causes had been instituted by the London and South Western Railway Company, the owners of the steam vessel *Normandy*, and by the owners of the steam ship *Mary*, in respect of a collision between the vessels on the 17th day of March, 1870. The suit No. 5,347 by the owners of the *Normandy*, was commenced on the 7th day of May, and on the 21st following an appearance was entered, and on the same day the cause No. 5,359 by the owners of the *Mary* was also instituted. Various actions at common law were also begun against the London and South Western Railway Company, by owners of goods put on board the *Normandy*. Petitions had not yet been filed in the Admiralty Court.

*Cohen*, on behalf of the London and South Western Railway Company, the plaintiffs in the suit for limitation of liability, moved, that the plaintiffs in cause No. 5,359, brought by the owners of the *Mary*, their proctors, solicitors, or agents, and all other persons interested in the *Normandy* or *Mary*, or having any right,

title or interest in respect of the said collision, might be restrained from further prosecuting any other proceedings against the plaintiffs, in respect of the loss or damage caused by the said collision. His clients were willing to pay into Court the sum of 3,060*l.*, the value of the *Normandy*, calculated at 15*l.* for each ton of the gross registered tonnage of the vessel, together with interest.

*E. C. Clarkson*, for the owners of the *Mary*, and for the owners of her cargo.—The Court has no jurisdiction to entertain a suit of limitation of liability, except in cases where the “ship, or vessel, or the proceeds thereof, are under arrest”—The Admiralty Court Act, 1861, s. 13. Neither the *Normandy* nor the proceeds thereof are under arrest or constructive arrest, as the *Normandy* is at the bottom of the sea, and the money paid into Court is not the proceeds of the vessel. Nor can it be treated as money paid to prevent the arrest of the *Normandy* as in the *Northumbria* (1). The plaintiffs in the present suit must at least admit their liability in respect of the collision. Unless the plaintiffs are to blame for the collision, there is no liability to admit—*Hill v. Audus* (2). In the *Amalia* (3), all the claimants were persons who had a right to bring actions in this Court, but in the present case the owners of the *Normandy* are domiciled in England, and many of the persons preferring claims against them for damage to cargo, cannot sue the *Normandy* in this Court.

*Cohen*, in reply.—The plaintiffs are willing that the collision suit, No. 5,359, should be proceeded with, in order to determine the question of liability, and they undertake that if in that suit the *Normandy* should be found to be solely to blame, or if the Court should find the *Normandy* and *Mary* to blame for the collision, the plaintiffs will in the other actions and suits admit their liability to such plaintiffs as may prove their title to sue.

(1) Ante, p. 24.

(2) 1 Kay & J. 263; s.c. 24 Law J. Rep. (N.S.) Chanc. 229.

(3) Bro. & Lush. 151; s.c. 32 Law J. Rep. (N.S.) Adm. 191.

SIR ROBERT PHILLIMORE.—This is an application to the Court to exercise the power conferred upon it by the 13th section of the Admiralty Court Act, 1861. Various objections have been taken by the owners of the *Mary*. It is contended by them that as the *Normandy* was sunk in the collision, and could not be arrested, the Court has no jurisdiction to grant the relief asked for. I should be sorry to allow such an objection to prevail, and when the words of the 13th section of the Admiralty Court Act, 1861, are carefully considered in connection with the 34th section of the same Act, and the state of the law prior to the time of the passing of the Act, I think it may be gathered that it was the intention of the legislature to confer upon this Court jurisdiction to entertain a cause of limitation of liability in all cases where the jurisdiction of the Court over the principal question of damage was well founded. In the case of *The Northumbria*, where a præcipe for a caveat warrant had been filed by the owners of the vessel in order to prevent her arrest, and they had given bail, in pursuance of the undertaking contained in the præcipe, I held that the vessel was constructively under the arrest of the Court. In the present case, I am asked to go a step further. No præcipe for a caveat warrant has been filed by the owners of the *Normandy*, and the *Normandy* has not been, and could not have been, arrested. But although I cannot consider the question free from doubt, after careful consideration I have arrived at the opinion that I ought to entertain the present application. The jurisdiction of the Court over the principal question of damage is well founded, and that, I think, is sufficient to give me jurisdiction to entertain the suit of limitation of liability.

In the case of *Hill v. Audus* (2), which was decided in 1855, Lord Hatherley, who was then Vice Chancellor, held that the Court of Chancery having no jurisdiction over the principal question of damage could not entertain a suit of limitation of liability unless the liability were admitted. But my learned predecessor, in the case of *The Amalia* (3), decided in the year 1863, that the rule laid down in the case of *Hill v. Audus* (2) did not apply to

suits of limitation of liability instituted in this Court, because this Court has jurisdiction to decide the principal question of damage. I am certainly not disposed to question the propriety of the decision in the case of *The Amalia* (3). It is true that in the case of *The Amalia* (3) this Court was not asked to stay actions pending in any other Court, and I learn from the Registrar that now for the first time the Court is asked to stay actions pending in the Courts of Common Law. But if this Court has jurisdiction to entertain the suit of limitation of liability, I think there can be little doubt that it has power to stop all actions relating to the same subject-matter wherever pending, for the 514th section of the Merchant Shipping Act, 1854, expressly refers to actions “pending in any other Court.”

In the course of the argument there has been considerable discussion about the terms upon which I should grant the relief asked. The plaintiffs offer to pay into court the full value of the *Normandy* calculated at 15*l.* per ton and interest. They also undertake if, on the hearing of the collision suits, the Court should find the *Normandy* to blame, that they will admit their liability in the other actions. Upon these conditions I shall make an order to stay all actions and suits pending in any other Court relating to the subject-matter. The terms of the order must be carefully considered. The plaintiffs must file their petition in this cause within three days.

The order was drawn up in the following form:—

#### NORMANDY (5,366).

The judge having heard counsel for the plaintiffs and the several defendants, ordered that all actions and suits pending in any other court in relation to the subject-matter in the suit, to wit, the liability of the owners of the vessel *Normandy*, the plaintiffs in this suit, in respect of loss of life, or personal injury, or loss or damage to ships, goods, merchandise, or other things, on the occasion of a collision which occurred on or about the 17th day of March, 1870, between the said vessel *Normandy* and a vessel called the *Mary*, be stopped, the plaintiffs by their counsel undertaking to admit their liability in all

H

such actions and suits as soon as this Court shall have pronounced for the damage proceeded for in the cause pending in this Court entitled *The Normandy* (5,359), or for a moiety of such damage.

*Willis* (on July 12th) moved to dissolve the injunction so far as it affected Messrs. Milburn, Beeston, and Co., who had brought an action in the Court of Exchequer against the London and South Western Railway Company for the non-delivery of certain goods destined for Jersey, and lost in the *Normandy*. He contended that the action was brought against the company, not as shipowners but as common carriers. The goods had been delivered at the receiving house of the company in London for transport to Jersey, without any agreement as to their mode of transmission. The consignors had not selected the ship in which the sea part of the transportation was to be made, and there was no privity between them and the company as shipowners. The company might have sent them by a ship not their own property, in which case no rights would accrue to the plaintiffs against the shipowner; their remedy would lie against the company alone. Besides, before an injunction should have issued proof ought to have been given that the goods in question were actually on board the *Normandy*. Plaintiffs had delivered them in London, there was no bill of lading, and no proof before the Court that these goods had been lost on this particular occasion.

*Shepherd*, for the defendants, argued that the plaintiffs were of course aware that part of the transmission must be by sea, and therefore, as the contract was indivisible, that the plaintiffs must have been taken to have contracted with the defendants as shipowners—*Le Couteur v. London and South Western Railway Company* (4).

*Willis* in reply.

Sir ROBERT PHILLIMORE.—I am satisfied I ought not to dissolve the injunction.

(4) Law Rep. 1 Q.B., 54; 35 Law J. Rep. (n.s.) Q.B. 40.

tion. I reject the motion, but without costs (5).

Proctors—Clarkson & Co. for the owners of the *Normandy*.

Attorney—T. Cooper, for the owners of the *Mary*.

1870.  
March 30.  
April 26.  
July 27.  
Aug. 2.

THE CLARA KILLAM.

*Damage—Electric Cable cut—Liability of ship.*

*A ship's anchor got entangled with an electric cable, and the cable was cut by order of the master:—Held, that under the circumstances the master was guilty of a want of nautical skill, and that the Court had jurisdiction to entertain a suit against the ship. Ship condemned in damages and costs.*

This was a suit instituted by the managers of the Submarine Telegraph Company between England and France against the ship *Clara Killam* to obtain compensation for injury done by the ship to the telegraph cable.

The *Clara Killam*, from Boston, United States, arrived in the Downs on the 19th of March, 1869, and bore up off Old Stairs buoy, where she remained until four o'clock the next day, when the wind blew heavily from the westward and she began to drive. She was with difficulty brought up to the south of the Deal Bank Buoy, when it was discovered that the port anchor was gone. A spare anchor of smaller size was then bent on the port chain, and some time afterwards let go. The wind went round to the north-east, and the vessel drove in the direction of the Varne Sands, but was brought up about nine in the morning of the next day. Early on the following morning the crew began to heave in both anchors and found an extraordinary strain upon them,

(5) On the 8th of November the Court of Exchequer refused a rule for stay of proceedings in the action at Common Law above referred to. See Law J. Rep. Weekly Notes (Nov. 11th, 1870), p. 220.

and about eleven o'clock the anchors were brought to the water's edge, when it was seen that one or both were entangled with the telegraph cable.

The plaintiffs in their petition alleged (amongst other things) as follows:—

"The said telegraph cable, with ordinary care and proper management, might have easily been got clear of the said anchor without any damage being done to the said cable or anchor, but the said master on seeing the said cable lying over the anchor stock, ordered the mate of the said vessel to go over the bows of the said vessel and to cut the cable, and the mate upon receiving such orders went over the bows of the said vessel and commenced to cut the said cable with a hatchet, and after cutting and hacking at the said cable, with the sanction and under the directions of the said master, for about three-quarters of an hour, he succeeded in severing the said telegraph cable in two, thereby doing much damage to the said telegraph cable."

"The damage done to the said telegraph cable, and the loss consequent thereupon, were solely and entirely caused by the improper conduct and by the want of care and proper management on the part of the said master of the said ship."

The defendants in their answer alleged (amongst other things) as follows:—

"This Court has not jurisdiction to entertain this suit.

"At about five A.M. on the morning of the 21st of March, the crew of the *Clara Killam* commenced heaving in her chains, and continued so doing until about eleven A.M., by which time they succeeded in heaving up both her anchors, but as the *Clara Killam* still rode, it was concluded that the anchors of the *Clara Killam* were foul of something.

"The anchors of the *Clara Killam* were with great labour and difficulty got to the water's edge, and it was then found that both the anchors of the *Clara Killam* had become and were entangled with the cable mentioned in the petition, in such a manner as to render it impossible to extricate the same therefrom before the lapse of a considerable time, save by severing the said cable. The said cable was then already stranded and injured at the part

of it with which the anchors of the *Clara Killam* were entangled, and the weight and strain of the *Clara Killam* on it was further damaging it, and before it would have been possible to have disentangled it from the said anchors further damage would have been done to the said cable, and it would most probably have parted, and in the meantime the *Clara Killam* herself was lying exposed to danger; and, under the circumstances, the master of the *Clara Killam*, acting reasonably and justifiably, caused the said cable to be severed, and it was thereby cleared from the said anchors.

"Before the said cable was severed, as aforesaid, it had received such an amount of injury as would have necessitated its being raised and repaired, and renewed, and by the said act of severing the said cable no damage was occasioned to the plaintiffs or the owners of the said cable.

"The injury to the cable was the result of inevitable accident."

*Huddleston, Dr. Spinks, Butt, and Dr. Tristram* for the plaintiffs.

*Milward and E. C. Clarkson* for defendants.

At the conclusion of the evidence,

*Butt* for plaintiffs.—The defendants are clearly responsible for the damage—*The Submarine Telegraph Company v. Dickson* (1). The evidence shews that the cable might easily have been slipped without damage to itself or risk to the ship. The master was guilty of want of skill and negligence in ordering the cable to be cut, and for this the ship is responsible.

*Milward*.—The Court has no jurisdiction. Its powers, if any, are conferred by the 7th section of the Admiralty Court Act, 1861, under the words "jurisdiction over any claim for damage done by any ship." In this case the injury was committed by the master, and the ship was not even in motion. The ship was in peril by being entangled with the cable, and the master, under the circumstances, was justified in ordering the cable to be cut.

*Butt*, in reply.

(1) 15 Com. B. Rep. N.S. 759; s.c. 33 Law J. Rep. (N.S.) C.P. 139.

SIR ROBERT PHILLIMORE. — This is a suit instituted by the managers of the Submarine Telegraph Company between England\* and France against the ship *Clara Killam*, to obtain compensation for the injury done by those on board her to the telegraph cable.

The *Clara Killam*, a vessel of 838 tons register, with a crew of 17 hands all told, sailed from London on the 16th of March, 1869, laden with a general cargo bound for Boston, in America.

She arrived on the 19th in the Downs; the weather became very bad, and she bore up off Old Stairs, where she remained till 4 p.m. the next day, when the wind blew heavily from the W., and she began to drive. She was brought up with difficulty to the S. of the Deal Bank buoy, when it was discovered that the port anchor was gone. A spare anchor of smaller size was then bent on the port chain, and some time afterwards let go. The wind flew to the N.E., and the vessel drove in the direction of the Varne Sands; but was brought up about 9 a.m. of the next day. Early in the next morning, between 3 and 4, the crew began to heave on both anchors, using their utmost exertions, but found an extraordinary strain upon the anchors, and it was not until nearly 11 o'clock that they succeeded in bringing the anchors to the water's edge. It was then discovered that one, if not both of the anchors (upon this point there may be some doubt), had become entangled with the telegraph cable, a circumstance which would appear to have preserved the vessel from destruction, inasmuch as it had prevented her from driving on the sands.

Up to this point in the history of this case, no charge is preferred against the defendants, no blame is ascribed to the *Clara Killam* for improperly fouling the telegraph cable. The course which in these circumstances the captain (having consulted, it is said, with the mate) ordered to be pursued was as follows: The mate, having put a bow line round him, was lowered down into the sea, his feet rested upon the starboard anchor's stock, and sometimes he was quite under water; in this condition he chopped, with an axe,

at the telegraph cable for about fifteen minutes or more.

The cable was by this means cut in two; and the ship, the wind being then favourable, proceeded immediately on her voyage to America. For this damage, so inflicted, the present action is brought, and as it is the first of the kind submitted to the jurisdiction of this Court, I thought it expedient to take a little time to examine the principles of law applicable to these novel circumstances, and I have derived assistance, in the execution of this task, from a perusal of the judgment of the Court of Common Pleas, delivered in 1864, in the case of *The Submarine Telegraph Company v. Dickson* (1).

I must consider that this telegraph cable was lawfully placed at the bottom of the sea, and in the spot where it received the injury. I must also consider that the vessel which did the injury to it was in the exercise of her right both in navigating the surface of the sea, and in dropping her anchors where and when she had let them go. The law requires that each party should exercise his right so as, if possible, to avoid a conflict with the right of the other. It was the duty, therefore, of the ship to disentangle, if possible, her anchor from the cable without injuring it. She was bound to apply ordinary skill, and to take the time necessary for this purpose, unless she thereby exposed herself to present or imminent peril—the suggestion in the ninth paragraph of the answer, that it was impossible to extricate her anchors “before the lapse of a considerable time, save by severing the said cable,” cannot be admitted as a justification of the act. It has been contended that the cable when brought up was in so injured a condition as to render the cutting of it practically immaterial. I should be disposed to admit this defence if it were supported by the evidence. But I am satisfied that it is not; but that, on the contrary, both the oral evidence, and that derived from an inspection of the parts of the cable produced in court, prove that the copper wire in the centre, through which the fluid passes, was wholly unimpaired; the insulating material was not rubbed off, though one of the protecting wires had been injured,



but all these wires might have been removed without destroying the working property of the electric wire, would remain still defended by the gutta percha, and the yarn or tow. The cable, though not a deep-sea cable, was a very strong one, and the injury done to it, apart from that caused by the cutting with the axe, was very trivial.

The elder brethren of the Trinity House advise me that, by ordinary nautical skill, the damage to the wire might have been avoided, and the anchor or anchors extricated. If a slip rope had been passed under the telegraph cable, and hove taut, the anchor might have been easily cleared, the slip rope then let go, and the cable dropped in its place; if both anchors were entangled the same course should have been adopted as to both. The ship has not the excuse of present or imminent danger to allege—the facts shew that she was under no pressure of this kind—reasonable skill, patience, and labour, would have been sufficient to extricate the anchor, without cutting the cable, an expedient which, in my judgment, assisted by that of my assessors, was recklessly and wrongfully had recourse to. The technical objection that this suit is instituted *in rem* and not *in personam*, and that the ship herself did not do the damage, but those on board of her, is untenable.

I pronounce the *Clara Killam* to blame for the injury done to the wire, the property of the Submarine Telegraph Company, and make the usual order of reference to the registrar, and condemn the ship in damages and costs.

Attorneys—Davies, Son, Campbell, & Reeves, for plaintiffs; T. Cooper, for defendants.

1869. }  
Dec. 21. } THE ELIZABETH.  
1870. }  
Jan. 18. }

*Damage—Cross-suits in County Court—Appeal—Claim under 50l.—31 & 32 Vict. c. 7. s. 33.*

*Cross causes of damage heard together in a County Court are, as to the right of appeal, to be considered distinct.*

*Plaintiffs in a cause of damage in the County Court claimed 100l., and recovered an amount under 50l.: —Held, that no appeal lay from the County Court to the High Court of Admiralty.*

These were cross causes brought in the city of London Court, by the owners of the *Adalia* and *Elizabeth*, and were heard together under order 37 of the general orders for regulating the Admiralty jurisdiction of the County Courts. The causes were each instituted in the sum of 100l. The Court found the *Elizabeth* alone to blame, and consequently dismissed the suit in which her owners were plaintiffs, and condemned them in the damages in the cause in which they were defendants. The owners of the *Elizabeth* appealed in both suits.

*Webster*, for the owners of the *Adalia*, moved the Court to dismiss the appeal in which the *Elizabeth* had been condemned in damages. The damages do not amount to 50l., and by the County Courts Admiralty Jurisdiction Act, 1868, “No appeal shall be allowed unless the amount decreed or ordered to be due exceeds the sum of 50l.” It is true the nautical assessors, who it was agreed between the parties should find the amount due, have not yet made an assessment, but there are affidavits proving that the damage amounts to 29l. 10s. 1d. only, and those affidavits afford sufficient proof of the fact.

*Edwyn Jones*, for the owners of the *Elizabeth*.—The plaintiffs in the County Court having claimed 100l. cannot, without the defendants’ consent, reduce their claim so as to oust the jurisdiction of this Court—*North v. Holroyd* (1).

*Cur. adv. vult.*

SIR R. J. PHILLIMORE.—This is a cause of appeal from the City of London Court, and is instituted by the owners of the *Elizabeth* against the owners of the *Adalia* in the sum of 300l. There were cross suits in the Court below, which, under the 37th order of the general orders issued under the County Courts Admiralty Jurisdiction Act, 1868, were heard “at the same time and upon the same evidence.”

(1) 37 Law J. Rep. (N.S.) Exch. 42; s. c. Law Rep. 3 Exch. 69.

Under the 31st section of the Act referred to (31 & 32 Vict. c. 71), "no appeal shall be allowed unless the amount decreed or ordered to be due, exceeds the sum of 50*l*." In the suit in which the *Elizabeth* was plaintiff the cause was dismissed, and in the suit in which the *Elizabeth* was defendant, she was pronounced solely to blame; and the amount was referred by consent to the nautical assessors. The report of the assessors I have not before me; but I have two affidavits, one from the proctor for the *Adalia*, stating that he verily believes the damage sustained by the *Adalia* to be the sum of 29*l*. 10*s*. 1*d*., and no more; and another affidavit by the managing clerk of the owners of the *Adalia*, to the effect that the damage sustained by her does not exceed 50*l*. It appears from the affidavit of the solicitor for the *Elizabeth*, that both the suits were instituted for the sum of 100*l*. in the Court below. The *Elizabeth* has appealed in both causes.

The *Adalia* prays that the appeal in the case in which she was the plaintiff in the Court below, may be dismissed with costs on account of the damage received by her being under the sum of 50*l*. The *Elizabeth*, on the other hand, prays that the two suits may be consolidated, and that an order may be made as to the amount of security for costs, and all further proceedings in the Court below stayed.

Upon this statement of facts, two questions have been mooted before me—first, whether the two suits having been heard together in the Court below, should not be considered as one suit, in which case as the *Elizabeth* claims upwards of 50*l*., and has received nothing, the section of the statute would not apply, according to my ruling in a former case? secondly, whether

I have proper evidence before me, that in the case in which the *Elizabeth* is the defendant, the amount decreed or ordered to be due does not exceed 50*l*.?

As to the first question, I am of opinion that the two suits cannot be considered as one any more than if they had been respectively instituted in different County Courts. This position is further confirmed by the practice on appeals from the High Court of Admiralty, in which cross suits which have been heard together are treated as separate with respect to the institution of the appeal. I must therefore dismiss this appeal when I have proper evidence before me that the amount decreed or ordered to be due does not exceed 50*l*. The second question is, whether I have or not the requisite evidence on this point, and I am of opinion that I have not. I have considered the case cited of *North v. Holroyd* (1).

The finding of the assessors as to the amount will, I presume, be made part of the decree *nunc pro tunc*, and on an affidavit being filed that that finding places the amount under 50*l*., I shall direct that the appeal in the suit in which the *Adalia* is plaintiff be dismissed. The motion will stand over for the filing of the affidavit (2).

Attorneys—Cattarns & Jehu, for appellants.  
Proctor—H. G. Stokes, for respondents.

---

(2) The appeal in the suit against the *Adalia* was heard on the 9th of February, when the Court, assisted by Trinity Masters, was of opinion that the *Adalia* was alone to blame, and decreed accordingly. In the result, therefore, the owners of the *Elizabeth* would recover in the High Court of Admiralty, and the owners of the *Adalia* in the City of London Court.

# INDEX

## TO THE REPORTS OF CASES

### DECIDED BY THE

## HIGH COURT OF ADMIRALTY.

MICHAELMAS TERM, 1869, to MICHAELMAS TERM, 1870.

**ACCOUNT—Co-owners: right to sue after ceasing to be owner**—One who has parted with his shares in a vessel may nevertheless sue for the accounts as to her earnings while he was a co-owner. Motion to reject the petition dismissed, but without costs. *The Lady of the Lake*, 40

**AMENDMENT—of error in a decree**—To entitle a party to amend an error in a decree, the mistake should be brought to the notice of the Court with the utmost possible diligence. Application to alter a decree five months after the decree was made was rejected. *The Orient*, 10

— **mistake in præcipe to institute costs**—In the præcipe to institute the cause the plaintiffs stated the suit as one of "damage to cargo," and the affidavit to lead warrant alleged that plaintiffs had sustained damage by breach of duty and breach of contract. After the arrest of the ship, and appearance entered on behalf of her owners' motion to amend by striking out of the præcipe to institute the words "damage to cargo," and substituting the words "breach of duty and breach of contract on the part of the master and crew," granted on payment of the costs occasioned by the mis-statement in the præcipe. *The Princess Royal*, 29

**APPEAL—damage: cross-suits in County Court: claim under 50l.**—Cross causes of damage heard together in a County Court, are, as to the right of appeal, to be considered distinct. *The Elizabeth*, 53

Plaintiffs in a cause of damage in a County Court claimed 100l., and recovered an amount under 50l.:—*Held*, that no appeal lay from the County Court to the High Court of Admiralty. *Ibid*.

— **from County Courts: further appeal to the Privy Council**—In appeals from County Courts, the High Court of Admiralty will not generally allow further appeals, except—1. When the law applicable is doubtful or novel; 2. When the Court has doubts as to the correctness of its decision; 3. When the pecuniary interests at stake are large. *The Samuel Laing*, 42

**BOTTOMRY—advances: subsequent bottomry bond**—A. & Co. agreed to purchase at Akyab car-

goes of rice for F. & Co., A. & Co. to be secured by hypothecation of the bills of lading and a fixed freight of 5s. per ton. Whilst the ship *E. P.* was loading one of the cargoes, A. & Co. advanced about 540l. for ship's disbursements, but upon hearing that F. & Co. had stopped payment, induced the master to execute a bottomry bond both for the advances already made and also for a further sum of small amount:—*Held*, that the first advances were made partly upon personal security and partly upon the margin of freight, and could not therefore be secured by a subsequent bottomry. *Held* also, that the further advances were too trivial to render the bond valid with respect to them. *The Empire of Peace*, 12

— **notice: insolvent owner: assignee**—In no case can notice of the intention to raise money by bottomry be dispensed with. *Barron v. Stewart*; "*The Panama*" (P.C.), 37  
Until an owner has been judicially declared insolvent, he is entitled to notice. But if an owner has been judicially declared insolvent, the assignees are entitled to notice. *Ibid*.

**COLLISION—sailing rules, No. 14: construction of "ships crossing"**—Rule 14 of the sailing and steering rules provides that "If two ships under steam are crossing, so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other." The appellants' ship, in proceeding down a river, and intending to keep her course, in order to round a bend in the river, had her head slightly inclined so as to exhibit her mast-head and portlight only to the respondents' ship, which was proceeding up the river:—*Held* (reversing the judgment of the Admiralty Court), that the vessels were not crossing within the meaning of the above rule. That the fact that the portlight only of the appellants' ship was seen by the respondents was not conclusive evidence that the vessels were crossing; that the relative position of the vessels was not only to be regarded but also the place in which the vessels were situated. *General Steam Navigation Company v. Hedley*; *The Velocity* (P.C.), 20

**COLLISION.** See **Damage.**

**COSTS**—when the liability is under 300*l.* See **Damage.** **Salvage.**

**COUNTY COURT.** See **Jurisdiction.**

**DAMAGE—limitation of defendants' liability: costs]**

—A vessel was arrested in the Court of Admiralty, in a cause of damage for losses exceeding 300*l.* Defendants admitted their liability, and paid into Court 252*l.*, the amount of their statutory liability at 8*l.* per ton:—*Held*, that plaintiffs were entitled to the costs of proceeding in the Admiralty Court. *The Young James*, 1

— *limitation of defendants' liability: date from which interest is to be computed]*—In all cases of limitation of liability for damage done by any ship, interest will be given upon the limited amount from the date of the collision. *The Northumbria*, 3

— *limitation of defendants' liability: vessel not under arrest]*—In suits for limiting the liability of the owners of a wrongdoing vessel the Court has jurisdiction if bail has been given by her owners, even though no arrest has actually taken place. *The Northumbria*, 24

— *responsibility of wrongdoing vessel for acts of their agent: special defence: costs]*—In a cause of damage, plaintiffs alleged the damage to be imputable solely to the acts of the owners of the O. and their servants, which averment defendants, the owners, traversed. At the hearing it was proved that the damage was caused by one acting not within the scope of his authority from the owners:—*Held*, that such a defence should have been specifically pleaded, and that, therefore, though the petition was dismissed, defendants were not entitled to their costs. *The Orient*, 8

— *action against steam-tug for collision whilst towing]*—The L. A., in charge of a pilot and in tow of the steam-tug, E., was coming up the river Thames, and the M., under full sail, was crossing. The E. attempted to tow the L. A. ahead of the M., but the L. A. and M. came into collision:—*Held*, that the steam-tug was to blame for attempting to tow across the bows of the M., and the pilot of the L. A. for not ordering the E. to slip the tow-rope in time to avoid the collision. And a suit by the owners of the L. A. to condemn the steam-tug E. in the damage done to both the M. and L. A., was dismissed, but without costs. *The Energy*, 25

— *reference to registrar: evidence to support claim by underwriters]*—On a reference to the registrar in a cause of damage the plaintiffs, who were underwriters of the cargo, and had paid as for a total loss, produced in support of their title as owners of the cargo lost, the policies of insurance of the cargo, the bills of lading, and the invoice and copy manifest:—*Held*, that the plaintiffs must give further evidence of the value of the goods, and of a discharge from the owners of the cargo. *The John Bellamy*, 28

— *to cargo: fraud and misconduct of master: right to sue the ship]*—A petition alleged that a master who was also owner of a vessel had wilfully, improperly and fraudulently injured and abandoned her on the high seas. She was subsequently taken into port by salvors, and plaintiffs, the owners of cargo, were compelled to pay salvage to get possession of their cargo, and its delivery was consequently delayed. The master and vessel were both foreign:—*Held*, that the allegation "fraudulently" might be struck out of the petition, that the Court had jurisdiction over the cause, and that the plaintiffs might sue the ship in the Admiralty Court for the constructive damage. *The Princess Royal*, 43

— *increase of amount of action]*—In a cause of damage defendants having admitted their liability, and before the reference to ascertain the amount of damage had taken place plaintiffs having moved to amend the *præcipe* to institute the cause by increasing the amount of the action, the Court granted the motion on payment of defendant's costs. *The Johannes*, 41

— *limitation of liability: vessel not under arrest: injunction to restrain actions at common law]*—The N. and M. came into collision, and the M. was sunk. Cross causes of damage were instituted, but had not been heard, nor the liability for the collision determined, but the owners of the N. paid into Court the amount of their liability, as limited by statute:—*Held*, 1. That the Court had jurisdiction in a suit for limitation of liability, even though the N. had been sunk, and therefore could not be arrested. 2. That the Court could grant an injunction to restrain actions at common law in respect of the same collision. 3. That actions at common law for the loss of goods damaged by the collision might be restrained, even though the goods were to be carried partly by sea and partly by land. *The Normandy*, 48

— *electric cable cut: liability of ship]*—A ship's anchor got entangled with an electric cable, and the cable was cut by order of the master:—*Held*, that, under the circumstances, the master was guilty of a want of nautical skill, and that the Court had jurisdiction to entertain a suit against the ship. Ship condemned in damages and costs. *The Clara Killam*, 50

— See **Amendment Appeal.**

**DEBTOR AND CREDITOR.** Assignment a fraudulent preference. See **Mortgage.**

**DECREE.** See **Amendment.**

**EVIDENCE.** See **Damage.**

**FOREIGN ENLISTMENT ACT—construction: forfeiture of ship]**—The Foreign Enlistment Act (59 Geo. 3. c. 69. s. 7) provides, that if any person shall, without the leave, &c., equip, furnish, or fit out, any ship or vessel with intent or in order that such ship or vessel shall be employed in

the service of any foreign prince, or if any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, as a transport, &c., every such person shall be guilty of a misdemeanour, and every such ship shall be forfeited. The respondent's ship was fitted out as a transport for the service of certain persons in the island of Cuba, who had revolted from Spain, and had assumed to exercise government, and were conducting hostilities against Spain. It did not appear who the persons were or over what part of Cuba they assumed to exercise government:—*Held*, that inasmuch as the persons in whose service the ship was employed assumed to exercise government, there was a breach of the provisions of the Act, and the respondent's ship was liable to forfeiture. *R. v. Carlin—The Salvador (P.C.)*, 33.

**INTEREST**—in cases of limitation of liability. See *Damage*.

**JURISDICTION**—*necessaries supplied to vessel in her own port: owner domiciled in England*—County Courts exercising Admiralty jurisdiction cannot, as such, entertain a claim for necessaries supplied either to a vessel in her own port, or when an owner of the vessel is domiciled in this country. *The Douse*, 46

*Seem*, that the High Court of Admiralty may exercise an appellate jurisdiction in a matter over which it has no original jurisdiction. *Ibid*.

*Seem* also, that it has an appellate jurisdiction over the Court of Passage at Liverpool. *Ibid*.

— See *Salvage*.

**MORTGAGE**—*fraudulent preference*—An insolvent debtor must not assign all or nearly all his effects to one creditor, so as to put it out of

the debtor's power to carry on his trade. But an assignment is not necessarily fraudulent when it does not include the whole of the trade effects, or when the debtor gets a present equivalent for his goods. *The Heart of Oak*, 15

The assignment of a security to a particular creditor, even when bankruptcy is inevitable, if the assignment be not made voluntarily, is not necessarily a fraudulent preference. *Ibid*.

**NEGIGENCE**. See *Damage*.

**PRACTICE**. See *Amendment*. *Principal and Agent*. See *Damage*.

**SALVAGE**—*award under 300l.: tender: costs*—In a cause of salvage the defendants tendered 282l. together with such costs (if any), as shall be due by law. The Court at the hearing of the cause pronounced for the tender:—*Held*, that though the amount recovered was less than 300l. the plaintiffs were entitled to costs up to the tender. *Held* also, that, when a tender is made in a salvage suit, it should state that it is a tender for salvage and costs, or should specify the ground upon which costs are not tendered, and refer the question of costs to the consideration of the Court. *The Hickman*, 7

— *jurisdiction where value under 1,000l.*—Where a vessel had been arrested in two causes of salvage, which upon motion by consent of all parties had been consolidated, and a petition was afterwards filed, a motion by defendants to dismiss the suit with costs and damages, as the value of the property saved was under 1,000l., was rejected with costs. *The Herman Wedel*, 30

*Seem*—Under the County Courts Admiralty Jurisdiction Act, 1868, the High Court of Admiralty may in its discretion take cognizance of salvage suits when the value of the property saved is under 1,000l. *Ibid*.

## TABLE OF CASES.

Barron v. Stewart (P.C.), 37

Clara Killam, 50

Douse, The, 46

Elizabeth, The, 53

Empire of Peace, The, 12

Energy, The, 25

General Steam Navigation Co. v. Hedley (P.C.), 20

Heart of Oak, The, 15

Herman Wedel, The, 30

Hickman, The, 7

Johannes, The, 41

John Bellamy, The, 28

Lady of the Lake, The, 40

Normandy, 48

Northumbria, The, 3, 24

Orient, The, 8, 10

Panama, The (P.C.), 37

Princess Royal, The, 29, 43

Regina v. Carlin (P.C.), 33

Salvador, The (P.C.), 33

Samuel Laing, The, 42

Velocity, The (P.C.), 20

Young James, The, 1

**PRINTED BY SPOTTISWOODE & Co.**

**New-street Square ; 29 Chancery Lane ; 30 Parliament Street ; 38 Royal Exchange.**

# THE PUBLIC GENERAL ACTS

OF THE UNITED KINGDOM OF

**GREAT BRITAIN AND IRELAND:**

PASSED IN THE

**THIRTY-THIRD AND THIRTY-FOURTH YEARS**

OF THE REIGN OF HER MAJESTY

## QUEEN VICTORIA

At the Parliament begun and holden at Westminster, the Eighth Day of February, *Anno Domini* 1870, in the Thirty-third Year of the Reign of our Sovereign Lady VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith :  
Being the SECOND SESSION of the TWENTIETH PARLIAMENT of the United Kingdom of GREAT BRITAIN and IRELAND.



LONDON :

PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,  
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.

PUBLISHED, FOR THE PROPRIETORS OF THE LAW JOURNAL REPORTS, BY  
EDWARD BRET INCE, No. 5, QUALITY COURT, CHANCERY LANE, LONDON.

MDCCCLXX.







33 VICTORIA, 1870.

---

CHAP. 1.

*Provisional Orders Bills (Committees).*

---

ABSTRACT OF THE ENACTMENTS.

1. *Power to Committees of either House of Parliament on Bills confirming Provisional Orders to award costs.*
  2. *Power to such Committees of House of Commons to examine witnesses upon oath.*
- 

An Act to empower Committees on Bills confirming Provisional Orders to award Costs and examine Witnesses on Oath.  
(25th March 1870.)

WHEREAS it is expedient to empower Committees of both Houses of Parliament to award costs in certain cases, and also to empower Committees of the House of Commons to administer oaths to witnesses in certain cases not already provided for :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. Any Select Committee of either House of Parliament to which any Bill for confirming Provisional Orders has been referred in relation to any Provisional Order therein contained may

award costs in like manner and subject to the same conditions as costs may be awarded by any Select Committee empowered to award costs by the Act of the twenty-eighth Victoria, chapter twenty-eight, and the provisions of the said Act so far as they are applicable shall apply to such Select Committees and to the matters so referred to them.

2. Any Select Committee of the House of Commons to which any Bill for confirming Provisional Orders has been referred in relation to any Provisional Order therein contained may examine witnesses upon oath in like manner as any Select Committee to which any Private Bill has been referred may administer oaths under the Act of the twenty-second Victoria, chapter seventy-eight, and the provisions of the said Act so far as they are applicable shall apply to any Select Committee to which any such Bill has been referred as aforesaid and to the oaths administered by such Committee.

## CHAP. 2.

*The Dissolved Boards of Management and Guardians Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Persons acting as guardians or managers at time of dissolution, &c. to continue in office to wind up accounts; and empowered to make orders upon parishes or unions for contributions, and to enforce the same;*
2. *And also may retain services of officers with salaries and for periods to be approved of by Poor Law Board.*
3. *Provision for the continuance of actions, suits, or other proceedings.*
4. *Poor Law Board upon notice from managers, &c. to make adjustment.*
5. *When union is formed out of parishes the last acting guardians, &c. to continue till guardians are elected.*
6. *The accounts of the last acting guardians, &c. to be audited.*
7. *As to payment of loans contracted and still due.*
8. *Deeds and other matters relating to the relief of the poor transferred to new board of guardians.*
9. *Superannuation allowances and compensations to be paid by guardians of unions.*
10. *Sect. 20. of 30 & 31 Vict. c. 106. extended to a parish added to another parish to form a union.*
11. *Provision for the valuations of property on dissolution, separation, or amalgamation of unions and districts.*
12. *Vesting of property of dissolved unions, &c. in last acting managers or guardians until sold, &c. under sect. 3. of 5 & 6 W. 4. c. 69.*
13. *Construction of Act.*
14. *Short title.*

An Act to make provision for the proceedings of Boards of Management and Boards of Guardians upon the dissolution of Districts and Unions or the annexation of Parishes to Unions.

(25th March 1870.)

WHEREAS it is expedient that better provision should be made for the proceedings of boards of management and boards of guardians when the districts or unions for which they have acted respectively are dissolved, or the parish for which any such board of guardians have acted shall be added to a union or to another parish:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. When the Poor Law Board shall have dissolved or shall dissolve any district the component parts whereof shall not have been formed into one union, or shall have dissolved or shall dissolve any union, or shall have added or shall add any parish in which the relief to the poor shall be or shall have been administered by a board of guardians to a union or to another parish, the persons who were acting as managers or guardians at the time of the dissolution or addition, and the survivors of them, shall continue in office for the purpose of paying and discharging the debts and

liabilities of such district, union, or parish, and of receiving and recovering moneys or other property due to the said district, union, or parish, as the case may be, in like manner as the board of management or board of guardians could have done if no dissolution or addition had taken place; and the said managers or guardians shall be empowered to make all necessary orders for contributions upon the unions and parishes comprised within the district or union so dissolved, or upon the proper authorities of the parish so added, as the case may require, and to enforce the same as the board of management or board of guardians could have done previous to the dissolution or addition respectively; provided that the limitation of time for the payment of debts imposed by the statute of the twenty-second and twenty-third Victoria, chapter forty-nine, shall not apply to the cases of districts or unions dissolved or of parishes added to a union before the passing of this Act, where such limitation had not taken effect previous to the dissolution or addition thereof as aforesaid; and provided that no such managers or guardians shall be empowered to act in the manner aforesaid for a longer period than twelve months from the date of the dissolution or addition, unless the Poor Law Board by their order shall authorize them to continue to act for some special purpose.

2. The said managers or guardians may retain the services of such of the officers of the board of management or board of guardians respectively

as they shall deem requisite to enable them to complete the liquidation and discharge of the debts and liabilities of the union, district, or parish, or appoint others to assist them, with such remuneration and for such time only as the Poor Law Board shall approve.

3. All actions, suits, or other proceedings commenced by or against the board of management or board of guardians prior to the dissolution or addition aforesaid, may be continued by or against the said last acting managers or guardians in the name of the board of management or board of guardians, as the case may be, except where the several parts of a district shall have been or shall be formed into one union, in the manner provided for by the second section of the Metropolitan Poor Amendment Act, 1869, and all the costs incurred by or adjudged against such managers or guardians in any such action, suit, or other proceeding, and not otherwise recovered, shall be chargeable to the same fund as if the action, suit, or proceeding had been determined before the dissolution or addition.

4. Upon notice from the managers or guardians, as the case may be, that all the current debts and liabilities of the district or union have been liquidated and discharged, or when the Poor Law Board shall otherwise deem it expedient, the said board shall proceed to make such adjustment of the rights and liabilities of the several unions or parishes contained in such district or union respectively as is provided for by the thirty-second section of the Poor Law Amendment Act, 1834, and the first section of the Metropolitan Poor Amendment Act, 1869.

5. Upon the issue of the order of the Poor Law Board forming a union of two or more parishes, in which the relief to the poor has been administered by a board of guardians, the last acting guardians or overseers respectively shall continue to administer such relief in the parish or parishes respectively until the guardians for the union shall be completely elected.

6. The accounts of the last acting managers or guardians and of their officers and of the overseers shall be audited in the like manner and for the like purpose and with the like effect and by the same auditor as if the dissolution or addition had not taken place.

7. If when a district or union has been or shall be dissolved there remain unpaid any instalment or instalments of a loan or loans contracted under the provisions of any Act of Parliament by the managers or guardians of such district or union, every such instalment and all interest on such loan or loans not discharged before the expiration

of the time within which the said last managers or guardians respectively can act shall from time to time after the same shall severally have become due be paid by such board or boards of managers or guardians as the Poor Law Board by their order shall direct, and the amounts shall be charged against the same parishes and in the same proportions as they would have been had no such dissolution taken place; and if when a parish has been or shall be added to a union or to another parish there remain unpaid any such instalment or instalments of any such loan or loans as aforesaid contracted by the guardians of the poor of the said parish, every such instalment and all interest on such loan or loans not discharged within such time as aforesaid shall from time to time after the same shall severally become due be paid out of the poor rates of the said parish by the overseers or other body or persons who make and levy the said rates; and the parties to whom any such instalment or interest shall be due shall have in all respects the same remedies for the recovery thereof against the managers or guardians so directed as aforesaid to pay the same, or against the overseers or other body or persons as aforesaid, as the case may be, as they severally had against the managers or guardians who originally contracted the loan in respect of which such instalment or interest is payable: Provided that nothing herein contained shall prevent the instalments and interest or balance of any such loan from being discharged out of the produce of the sale of any property belonging to any district or union at the time of the dissolution, or to any parish at the time of its being added to the union.

8. All deeds, bonds, covenants, indentures, orders of justices, or other matters affecting any poor persons, apprentices, or officers, entered into by or made upon or in favour of any board of guardians of a parish which shall be added to a union, shall vest in and enure to the benefit of or shall be a charge upon the guardians of the union to which such parish shall have been added without any assignment, transfer, or other act; and all securities, deeds, orders, books of account, and other documents relating thereto, shall, when required by said guardians, be delivered to them by the persons having the custody thereof; and all such deeds (other than the title deeds to property), bonds, indentures, orders of justices, or other documents and matters as aforesaid belonging to any dissolved district or union shall be preserved in such custody and shall be open to inspection in such manner as the Poor Law Board shall by their order from time to time direct.

9. Every superannuation allowance granted by a board of guardians in conformity with the provisions of the statute applicable thereto, and every

compensation ordered by the Poor Law Board to be paid to any officer by or on account of any parish, whether part of a dissolved union or not, shall, when such parish shall be added to or formed with another into a union, be paid by the guardians of such union to the person entitled thereto and charged by them to the account of such parish.

10. The provisions contained in the twentieth section of the Poor Law Amendment Act, 1867, relating to the period of service of officers and the allowance of compensations to persons deprived of their offices, shall extend to the case of a parish which shall be united to some one or more parishes to form a union, and to the officers of such parish.

11. When any district or union has been or shall be dissolved, or any parish has been or shall be added to or separated from a union, or any unions or parishes added to or separated from a district or part of it, or any parish has been or shall be added to another parish to form a union, and a valuation shall become requisite for the adjustment of the rights and liabilities of the districts, unions, or parishes affected thereby, such valuation shall be procured by the managers, guardians, or overseers of the districts, unions, or parishes respectively, in such manner as the parties interested shall mutually agree upon, or by the Poor Law Board in case of their not agreeing within such time as the board shall fix, which board shall direct the expenses incurred in procuring the same to be charged to the districts, unions, parishes, or parts thereof respectively, according as they shall be interested therein, in such pro-

portions as to the said board shall seem to be equitable; and every person in whose favour such direction shall have been given shall be entitled to recover the amount from the persons directed to pay the same, by action in like manner as any debt recoverable at law.

12. Upon the dissolution of any district or union, or the addition of any parish in which the relief to the poor shall have been or shall be administered by a board of guardians to a union or to another parish, the real and personal estate vested in the managers or guardians of such district, union, or parish respectively shall be transferred to and vested in the persons who were acting as managers or guardians respectively at the time of such dissolution or addition, to be held by them as joint tenants, according to the nature of such property, in trust for the parishes comprised in such district or union, or for the parish, as the case may be, until the same shall be sold, let, or otherwise disposed of under the authority of the third section of the "Union and Parish Property Act, 1835," and any Act extending the same: Provided that nothing herein contained shall apply to any parish provided for by the fifth section of the Metropolitan Poor Amendment Act, 1869, or by a Local Act.

13. The words used in this Act shall be construed in like manner as in the Poor Law Amendment Act, 1834, and in the subsequent Acts amending and extending the same.

14. This Act may be cited and described for all purposes as "The Dissolved Boards of Management and Guardians Act, 1870."

### CHAP. 3.

#### *East India (Laws and Regulations).*

##### ABSTRACT OF THE ENACTMENTS.

1. *Power to Executive Government of British India to make regulations for certain parts thereof.*
2. *Copies of regulations to be sent to Secretary of State. Subsequent enactments to control regulations.*
3. *Lieutenant governors and chief commissioners to be members ex officio of the Governor General's Council for the purpose of making laws and regulations.*
4. *Sect. 49. of 3 & 4 W. 4. c. 85. repealed.*
5. *Procedure in case of difference between the Governor General and the majority of his council.*
6. *Power to appoint natives of India to certain offices without certificate from the Civil Service Commissioners.*

An Act to make better provision for making laws and regulations for certain parts of India, and for certain other purposes relating thereto.

(25th March 1870.)

WHEREAS it is expedient that provision should be made to enable the Governor General of India in Council to make regulations for the peace and good government of certain territories in India, otherwise than at meetings for the purpose of making laws and regulations held under the provisions of The Indian Council's Act, 1861, and also for certain other purposes connected with the Government of India:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Every governor of a Presidency in Council, lieutenant governor, or chief commissioner, whether the governorship, or lieutenant governorship, or chief commissionership be now in existence or may hereafter be established, shall have power to propose to the Governor General in Council drafts of any regulations, together with the reasons for proposing the same, for the peace and government of any part or parts of the territories under his government or administration to which the Secretary of State for India shall from time to time by resolution in council declare the provisions of this section to be applicable from any date to be fixed in such resolution.

And the Governor General in Council shall take such drafts and reasons into consideration; and when any such draft shall have been approved of by the Governor General in Council, and shall have received the Governor General's assent, it shall be published in the "Gazette of India" and in the local "Gazette," and shall thereupon have like force of law and be subject to the like disallowances as if it had been made by the Governor General of India in Council at a meeting for the purpose of making laws and regulations.

The Secretary of State for India in Council may from time to time withdraw such power from any governor, lieutenant governor, or chief commissioner, on whom it has been conferred, and may from time to time restore the same as he shall think fit.

2. The Governor General shall transmit to the Secretary of State for India in Council an authentic copy of every regulation which shall have been made under the provisions of this Act; and all laws or regulations hereafter made by the Governor General of India in Council, whether

at a meeting for the purpose of making laws and regulations, or under the said provisions, shall control and supersede any regulation in anywise repugnant thereto which shall have been made under the same provisions.

3. Whenever the Governor General in Council shall hold a meeting for the purpose of making laws and regulations at any place within the limits of any territories now or hereafter placed under the administration of a lieutenant governor or a chief commissioner, the lieutenant governor or chief commissioner respectively shall be ex officio an additional member of the council of the Governor General for that purpose, in excess (if necessary) of the maximum number of twelve specified by the said Act.

4. Section forty-nine of the Act of the third and fourth years of King William the Fourth, chapter eighty-five, is hereby repealed.

5. Whenever any measure shall be proposed before the Governor General of India in Council whereby the safety, tranquillity, or interests of the British possessions in India, or any part thereof, are or may be, in the judgment of the said Governor General, essentially affected, and he shall be of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority in council then present shall dissent from such opinion, the Governor General may, on his own authority and responsibility, suspend or reject the measure in part or in whole, or adopt and carry it into execution, but in every such case any two members of the dissentient majority may require that the said suspension, rejection, or adoption, as well as the fact of their dissent, shall be notified to the Secretary of State for India, and such notification shall be accompanied by copies of the minutes (if any) which the members of the council shall have recorded on the subject.

6. Whereas it is expedient that additional facilities should be given for the employment of natives of India, of proved merit and ability, in the civil service of Her Majesty in India: Be it enacted, that nothing in the "Act for the government of India," twenty-one and twenty-two Victoria, chapter one hundred and six, or in the "Act to confirm certain appointments in India, and to amend the law concerning the civil service there," twenty-four and twenty-five Victoria, chapter fifty-four, or in any other Act of Parliament or other law now in force in India, shall restrain the authorities in India by whom appointments are or may be made to offices, places, and employments in the civil service of Her Majesty in India from appointing any native

of India to any such office, place, or employment, although such native shall not have been admitted to the said civil service of India in manner in section thirty-two of the first-mentioned Act provided, but subject to such rules as may be from time to time prescribed by the Governor General in Council, and sanctioned by the Secretary of State in Council, with the concurrence of a majority of members present; and that for the purpose of this Act the words "natives of India" shall include any person born and domiciled

within the dominions of Her Majesty in India, of parents habitually resident in India, and not established there for temporary purposes only; and that it shall be lawful for the Governor General in Council to define and limit from time to time the qualification of natives of India thus expressed; provided that every resolution made by him for such purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for thirty days before both Houses of Parliament.

#### CHAP. 4.

#### *The Income Tax Assessment Act, 1870.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Application of existing Income Tax Acts to duties to be granted.*
2. *As to returns, &c. under 32 & 33 Vict. c. 67.*
3. *Commissioners for general purposes to execute Acts relating to house duties.*
4. *Short title.*

An Act to make provision for the assessment of Income Tax, and to amend the law relating to Inland Revenue.  
(25th March 1870.)

WHEREAS in order to ensure the collection in due time of any duties of income tax which may be granted for the year commencing the sixth day of April one thousand eight hundred and seventy, it is expedient that the provisions of the Income Tax Acts relating to assessment should be applied to such duties before the same are granted:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. All such provisions contained in any Act of Parliament relating to the duties of income tax as are in force at the date of the passing of this Act shall have full force and effect with respect to any duties of income tax which may be granted for the year commencing the sixth day of April one thousand eight hundred and seventy, in the

same manner as if such duties had been actually granted, and the said provisions had been applied thereto; provided that nothing in this Act shall be deemed to continue or put in force sections six and seven of the Act of the session of the thirty-second and thirty-third years of the reign of Her present Majesty, chapter fourteen, or to continue the rates of income tax granted by that Act.

2. The returns and statements made under the Valuation (Metropolis) Act, 1869, shall be deemed to be and shall be taken as returns and statements for the assessment of the duties under schedules A. and B. of the Income Tax Act.

3. The commissioners for the general purposes of the Income Tax Acts shall be commissioners for executing the Acts relating to the inhabited house duties, and all appeals against the said duties shall be determined in like manner as appeals under schedule A. of the Income Tax Acts.

4. This Act may be cited as "The Income Tax Assessment Act, 1870."

## CHAP. 5.

*Consolidated Fund (£9,564,191 7s. 2d.)*

## ABSTRACT OF THE ENACTMENTS.

1. *There may be applied for the service of the years ending 31st March 1869 and 1870, &c. the sum of 564,191l. 7s. 2d. out of the Consolidated Fund.*
2. *There may be applied for the service of the year ending 31st March 1871 the sum of 9,000,000l. out of the Consolidated Fund.*
3. *Treasury may borrow 9,564,191l. 7s. 2d. on the credit of this Act.*
4. *Interest on moneys borrowed.*

An Act to apply certain sums out of the Consolidated Fund to the service of the years ending on the thirty-first day of March one thousand eight hundred and sixty-nine, one thousand eight hundred and seventy, and one thousand eight hundred and seventy-one, and preceding years.

(25th March 1870.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. There may be issued and applied, for or towards making good the supply granted to Her Majesty for the service of the years ending on the thirty-first day of March one thousand eight hundred and sixty-nine, one thousand eight hundred and seventy, and preceding years, the sum of five hundred and sixty-four thousand one hundred and ninety-one pounds seven shillings and twopence out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and the Commissioners of Her Majesty's Treasury for the

time being are hereby authorized and empowered to issue and apply the same accordingly.

2. There may be issued and applied, for or towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and seventy-one, the sum of nine million pounds out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and the Commissioners of Her Majesty's Treasury for the time being are hereby authorized and empowered to issue and apply the same accordingly.

3. The Commissioners of the Treasury may borrow upon the credit of the sums granted by this Act out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, an amount not exceeding in the whole the sum of nine million five hundred and sixty-four thousand one hundred and ninety-one pounds seven shillings and twopence, and such amount may be borrowed by the said Commissioners from time to time, in such sums as may be required for the public service, and shall be placed to the credit of the account of Her Majesty's Exchequer at the Bank of England, and be available to satisfy any orders for credits granted or to be granted on the said account, under the provisions of the "Exchequer and Audit Departments Act, 1866."

4. The sums borrowed from time to time under the authority of this Act shall bear interest not exceeding the rate of five pounds per centum per annum, and the principal and interest of all such sums shall be paid out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said sums shall have been borrowed.

## CHAP. 6.

*The Judges Jurisdiction Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title of Act.*
2. *Chief Judge, &c. may request assistance.*
3. *Evidence of request by Chief Judge not required.*
4. *Two divisions of any Court may be sitting at one time in banc.*
5. *Any number of sittings may be held at Nisi Prius at one time.*
6. *Definition of Chief Judge.*

An Act to extend the Jurisdiction of the Judges of the Superior Courts of Common Law at Westminster.

(25th March 1870.)

WHEREAS it is expedient to amend the law relating to the jurisdiction of the Judges of the Superior Courts of Common Law at Westminster:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "The Judges Jurisdiction Act, 1870."

2. In case any one of Her Majesty's Superior Courts of Common Law at Westminster shall require assistance in the despatch of business pending in such Court, and shall by the Chief Judge of such Court make request in writing to the Chief Judge of any other of the said Courts for the assistance of a Puisne Judge of such last-mentioned Court in the execution of the duties of the first-mentioned Court, either by sitting in Court or in any manner and for any purpose whatsoever, and such request may be either general or special, and for such time as may be therein specified; and the Chief Judge to whom such request is made shall thereupon refer such request to the Judges of the Court of which he is Chief Judge, and the Judges of such Court may (if the business pending in his Court do not peremptorily require the attendance of all the Puisne Judges) appoint one of such Puisne Judges

to assist the first-mentioned Court, and the Puisne Judge so appointed shall in all matters of which he may take cognizance have the same jurisdiction in all respects as if he were a Puisne Judge of the Court to which the Chief Judge belongs who requests his assistance.

3. No evidence shall be required of such request by such Chief Judge in order to found the jurisdiction of such Puisne Judge.

4. Any of the Superior Courts of Common Law at Westminster may sit in two divisions at one time in banc; and each of such divisions shall exercise the same power and authority as might be exercised by the whole Court so sitting in banc; and where necessary any Puisne Judge of either of the other Superior Courts may, on such request as above mentioned of a Chief Judge, assist in holding such sitting in the same manner and with the same authority as if he were a judge of the Court sitting in banc.

5. Any number of judges may at one and the same time hold a sitting or sittings at Nisi Prius either in London or Westminster, as may be deemed expedient by the Court.

6. The expression "Chief Judge" for the purposes of this Act shall mean the Chief Justice of the Court of Queen's Bench, the Chief Justice of the Court of Common Pleas, and the Chief Baron of the Exchequer, and where the office of any such Chief Judge is for the time being vacant, the senior Puisne Judge of the Court in which such office may be vacant.



## CHAP. 7.

*Mutiny.*

## ABSTRACT OF THE ENACTMENTS.

*Number of men to consist of 115,037, including those employed at depôts of regiments serving in India, but exclusive of those actually serving in India.*

1. *Articles of War made by Her Majesty to be judicially taken notice of, and copies printed by the Queen's printer to be transmitted to Judges, &c.*
2. *Persons subject to this Act.*
3. *Provisions of this Act to extend to Jersey, Guernsey, &c.*
4. *Colonial and foreign troops in Her Majesty's pay to be subject to provisions of this Act.*
5. *Provision as to the militia or yeomanry or volunteer corps or reserve forces.*
6. *Power to constitute courts-martial.*
7. *Place where offenders may be tried.*
8. *Powers of general courts-martial.*
9. *Powers of district or garrison courts-martial.*
10. *Powers of regimental or detachment courts-martial.*
11. *Courts-martial on line of march or in troop ships, &c.*
12. *Powers of detachment general courts-martial.*
13. *As to swearing and summoning of witnesses. Oath to be administered to shorthand writer.*
14. *No second trial for the same offence, but revision may be allowed.*
15. *Crimes punishable with death.*
16. *Judgment of death may be commuted for penal servitude or other punishments.*
17. *Embezzlement, &c. of stores punishable by penal servitude, or by fine, imprisonment, &c.*
18. *As to execution of sentences of penal servitude in the United Kingdom.*
19. *As to execution of sentences of penal servitude in the colonies, India, or elsewhere out of Her Majesty's dominions.*
20. *A sentence of penal servitude may be commuted for imprisonment, &c.*
21. *Of forfeitures, when combined with penal servitude.*
22. *Courts-martial may not sentence to corporal punishment in time of peace.*
23. *Power to inflict corporal punishment and imprisonment.*
24. *Power to commute corporal punishment for imprisonment, &c.*
25. *Power to commute a sentence of cashiering.*
26. *Marking deserters, or soldiers discharged with ignominy.*
27. *Power of imprisonment by different kinds of courts-martial.*
28. *As to imprisonment of offenders already under sentence.*
29. *Regulations as to military prisons.*
30. *As to the custody of military offenders under sentence of court-martial and in other cases.*
31. *As to the removal or discharge of prisoners in certain cases.*
32. *Provision for subsistence.*
33. *Expiration of imprisonment of soldiers in common gaols.*
34. *Apprehension of deserters in the United Kingdom; in Her Majesty's foreign dominions. Transfer of deserters.*
35. *As to the temporary custody of deserters in gaols.*
36. *Desertion of recruits prior to joining their regiments or corps.*
37. *Fraudulent confession of desertion.*
38. *Furlough in case of sickness.*
39. *No person acquitted or convicted by the civil magistrate or by a jury to be tried by a court-martial for the same offence.*
40. *Soldiers liable to be taken out of Her Majesty's service only for felony, misdemeanor, or for debts amounting to 30l. and upwards. Soldiers not liable to be taken out of Her Majesty's service for debts under 30l., or for not maintaining their families, or for breach of contract.*
41. *Officers not to be sheriffs or mayors, &c.*
42. *Questions to be put to recruits on enlisting.*
43. *Recruits when deemed to be enlisted.*
44. *When recruits to be taken before a justice.*

45. *Dissent and relief from enlistment.*
46. *Enlistment for particular branch or arm of service or for general service. Attesting of recruits.*
47. *Recruits, until they have been attested or received pay, not triable by court-martial, but in certain cases punishable as rogues and vagabonds.*
48. *Attested recruits triable in some cases either before two justices or before a court-martial.*
49. *Recruits absconding.*
50. *As to militiamen enlisting into regular forces.*
51. *Punishment of persons offending against laws relating to enlistment.*
52. *Enlistment and re-enlistment and transfer to another corps abroad.*
53. *Soldiers willing may be transferred to succeeding corps.*
54. *Soldiers may be transferred from one service to another.*
55. *Re-engagement of soldiers for a further term. Boon service to be reckoned.*
56. *Enlistment of negroes.*
57. *Apprentice enlisting to be liable to serve after the expiration of his apprenticeship. Claims of masters to apprentices.*
58. *Punishment of apprentices enlisting.*
59. *Removal of doubts as to attestation of soldiers.*
60. *Authorized deductions only to be made from the pay of the army.*
61. *Suspending operation of certain Acts herein recited.*
62. *Certain requirements of 6 Anne, c. 14. (I.), as to billeting in Ireland, not now necessary.*
63. *How and where troops may be billeted.*
64. *Billeting the guards in and near Westminster.*
65. *Military officers not to act as justices in billeting.*
66. *Allowance to innkeepers.*
67. *Interpretation of Act. Powers and regulations as to billets. Exemptions from billets.*
68. *Supply of carriages.*
69. *Rates to be paid for carriages, and regulations relating thereto.*
70. *As to supply of carriages in cases of emergency, &c.*
71. *Justices empowered to reimburse constables for sums expended by them.*
72. *Routes in Ireland.*
73. *Tolls.*
74. *Ferries.*
75. *Marching money on discharge.*
76. *Ordinary course of criminal justice not to be interfered with. Punishment of officers obstructing civil justice.*
77. *Penalty for disobedience by agents.*
78. *Penalty on trafficking in commissions.*
79. *Penalty for procuring false musters.*
80. *Penalty on unlawful recruiting.*
81. *Penalty for inducing soldiers to desert.*
82. *Penalty for forcible entry in pursuit of deserters without warrant.*
83. *Penalties on aiding escape or attempt to escape of prisoners, and on breach of prison regulations. Certain provisions of Acts for regulating gaols to apply to military prisons.*
84. *Penalty on keepers of prisons for refusing to confine, &c. military offenders.*
85. *Penalty on purchasing soldiers necessaries, stores, &c.*
86. *Penalties on civil subjects offending against the laws relating to billets; on toll collectors demanding toll from officers, soldiers, or for carriages; and on persons personating soldiers, &c.*
87. *Penalties on the military offending against the laws relating to billets.*
88. *Penalty on killing game without leave.*
89. *Form of actions at law.*
90. *Recovery of penalties.*
91. *Appropriation of penalties.*
92. *Mode of recording a soldier's settlement.*
93. *Licences of canteens.*
94. *Attestation of accounts.*
95. *Commissaries, &c. to attest their accounts.*
96. *Administration of oaths. Perjury.*
97. *Offences against former Mutiny Acts and Articles of War.*
98. *Officers and soldiers to conform to 26 & 27 Vict. c. 57., &c.*
99. *Where troops are serving beyond the jurisdiction of the courts of requests, &c., actions of debt not exceeding 400 rupees to be cognizable by a military court.*

100. *Provisions relating to courts-martial on officers and soldiers of Her Majesty's Indian forces.*

101. *As to trial of officers and soldiers serving in India.*

102. *Duration of this Act.*

103. *Interpretation.*

104. *Repealing section.*

*Schedules.*

## An Act for punishing Mutiny and Desertion, and for the better payment of the Army and their Quarters.

(4th April 1870.)

WHEREAS the raising or keeping a standing army within the United Kingdom of Great Britain and Ireland in time of peace, unless it be with the consent of Parliament, is against law: And whereas it is adjudged necessary by Her Majesty and this present Parliament that a body of forces should be continued for the safety of the United Kingdom, and the defence of the possessions of Her Majesty's Crown, and that the whole number of such forces should consist of one hundred and fifteen thousand and thirty-seven men, including six thousand three hundred and ninety-four, all ranks, to be employed with the depôts in the United Kingdom of Great Britain and Ireland of regiments serving in Her Majesty's Indian possessions, but exclusive of the numbers actually serving within Her Majesty's Indian possessions: And whereas no man can be forejudged of life or limb, or subjected in time of peace to any kind of punishment within this realm by martial law, or in any other manner than by judgment of his peers, and according to the known and established laws of this realm; yet nevertheless it being requisite, for the retaining all the before-mentioned forces in their duty, that an exact discipline be observed, and that soldiers who shall mutiny or stir up sedition, or shall desert Her Majesty's service, or be guilty of crimes and offences to the prejudice of good order and military discipline, be brought to a more exemplary and speedy punishment than the usual forms of the law will allow:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. It shall be lawful for Her Majesty to make Articles of War for the better government of Her Majesty's army, which articles shall be judicially taken notice of by all judges and in all courts whatsoever; and copies of the same, printed by the Queen's printer, shall, as soon as may be after the same shall have been made and established by Her Majesty, be transmitted by Her Majesty's Secretary of State for the War Department to the judges of Her Majesty's superior courts at Westminster, Dublin, and Edinburgh respectively, and

also to the governors of Her Majesty's dominions abroad: Provided that no person within the United Kingdom of Great Britain and Ireland, or within the British Isles, shall by such Articles of War be subject to suffer any punishment extending to life or limb, or to be kept in penal servitude, except for crimes which are by this Act expressly made liable to such punishments as aforesaid, or shall be subject, with reference to any crimes made punishable by this Act, to be punished in any manner which shall not accord with the provisions of this Act: Provided also, that nothing in this Act contained shall in any manner prejudice or affect any Articles of War or other matters made, enacted, or in force, or which may hereafter be made, enacted, or in force, under the authority of the Government of India, respecting officers or soldiers or followers in Her Majesty's Indian army, being natives of India; and on the trial of all offences committed by any such native officer or soldier or follower, reference shall be had to the Articles of War framed by the Government of India for such native officers, soldiers, or followers, and to the established usages of the service.

2. All the provisions of this Act shall apply to all persons who are or shall be commissioned or in pay as an officer, or who are or shall be listed or in pay as a non-commissioned officer or soldier, and to all warrant officers, and to all persons employed on the recruiting service receiving pay, and all pensioners receiving allowances in respect of such service, and to persons who are or shall be hired to be employed in the royal artillery, royal engineers, and to master gunners, and to conductors of stores, and to the corps of royal military surveyors and draftsmen, and to all officers and persons who are or shall be serving on the commissariat staff, or soldiers in the commissariat staff corps, and to officers and soldiers serving in the corps to be hereafter organised and called the army service corps, or in the military store department, or in the military store staff corps, and to persons in the War Department, who are or shall be serving with any part of Her Majesty's army at home or abroad, under the command of any commissioned officer, and (subject to and in accordance with the provisions of an Act passed in the sixth and seventh years of the reign of Her present Majesty, chapter ninety-five,) to any out-pensioners of the Royal Hospital, Chelsea, who may be called out on duty in aid of the civil power, or for muster or inspection, or who having

volunteered their services for that purpose shall be kept on duty in any fort, town, or garrison, and to all military store officers and other civil officers who are or shall be employed by or act under the Secretary of State for War at any of Her Majesty's establishments in the islands of Jersey, Guernsey, Alderney, Sark, and Man, and the islands thereto belonging, or at foreign stations; and all the provisions of this Act shall apply to all persons belonging to Her Majesty's Indian forces who are or shall be commissioned or in pay as officers, or who shall be listed or in pay as non-commissioned officers or soldiers, or who are or shall be serving or hired to be employed in the artillery or any of the trains of artillery, or as master gunners or gunners, or as conductors of stores, or who are or shall be serving in the department of engineers, or in the corps of sappers and miners, or pioneers, or as military surveyors or draftsmen, or in the ordnance or public works or commissariat departments, and to all storekeepers and other civil officers employed under the ordnance, and to all veterinary surgeons, medical storekeepers, apothecaries, hospital stewards, and others serving in the medical department of the said forces, and to all licensed sutlers, and all followers in or of any of the said forces; provided that nothing in this Act contained shall extend to affect any security which has been or shall be given by any military store officer, barrack master, or other officer, or their sureties, for the due performance of their respective offices, but that all such securities shall be and remain in full force and effect.

3. This Act shall extend to the islands of Jersey, Guernsey, Alderney, Sark, and Man, and the islands thereto belonging, as to the provisions herein contained for enlisting of recruits, whether minors or of full age, and swearing and attesting such recruits, and for mustering and paying, and as to the provisions for the trial and punishment of officers and soldiers who shall be charged with mutiny and desertion, or any other of the offences which are by this Act declared to be punishable by the sentence of a court-martial, and also as to the provisions which relate to the punishment of persons who shall conceal deserters, or shall knowingly buy, exchange, or otherwise receive any arms, medals for good conduct or for distinguished or other service, clothes, military furniture, or regimental necessaries from any soldier or deserter, or who shall cause the colour of any such clothes to be changed, or who shall aid in the escape of a prisoner from a military prison, or who shall introduce forbidden articles into such prison, or shall carry out any such articles, or who shall assault any officer of such prison, and also as to the provisions for exempting soldiers from being taken out of Her Majesty's service for not supporting or for leaving chargeable to any parish

any wife or child or children, or on account of any breach of contract to serve or work for any employer, or on account of any debts under thirty pounds in the said islands.

4. All officers and soldiers of any troops mustered and in pay which shall be raised and serving in any of Her Majesty's dominions abroad, or in places in possession of or occupied by Her Majesty's subjects under the command of any officer having any commission immediately from Her Majesty, shall be subject to the provisions of this Act and of Her Majesty's Articles of War, in like manner as Her Majesty's other forces are; and if such officers and soldiers, having been made prisoners, be sent into Great Britain or Ireland, although not allowed to serve therein, all the provisions of this Act in regard to billeting soldiers shall apply to such officers and soldiers.

5. Nothing in this Act contained shall be construed to extend to any militia forces or yeomanry or volunteer corps in Great Britain or Ireland, or to the reserve force provided for by "The Reserve Force Act, 1867," or to the reserve force provided for by "The Militia Reserve Act, 1867," excepting only where by any Act for regulating any of the said forces or corps the provisions contained in any Act for punishing mutiny and desertion are or shall be specifically made applicable to such forces or corps.

6. For the purpose of bringing offenders against this Act and against the Articles of War to justice, Her Majesty may from time to time, in like manner as has been heretofore used, grant commissions under the Royal Sign Manual for the holding of courts-martial within the United Kingdom of Great Britain and Ireland, and may grant commissions or warrants under the said Royal Sign Manual to the chief governor or governors of Ireland, the commander of the forces, or the person or persons commanding in chief, or commanding for the time being, any body of troops belonging to Her Majesty's army, as well within the United Kingdom of Great Britain and Ireland and the British Isles as in any of Her Majesty's garrisons and dominions or elsewhere beyond seas, for convening courts-martial, and for authorising any officer under their respective commands to convene courts-martial, as occasion may require, for the trial of offences committed by any of the forces under the command of any such last-mentioned officer, whether the same shall have been committed before or after such officer shall have taken upon him such command: Provided that the officer so authorised be not below the degree of a field officer, except in detached situations beyond seas where a field officer is not in command, in which case a captain may be authorised to convene district or garrison courts-

**martial:** Every officer so authorised to convene courts-martial may confirm the sentence of any court-martial convened by him according to the terms of his warrant.

7. Any person subject to this Act who shall, in any part of Her Majesty's dominions or elsewhere, commit any of the offences for which he may be liable to be tried by court-martial by virtue of this Act or of the Articles of War, may be tried and punished for the same in any part of Her Majesty's dominions or in any other place whereto he may have come or where he may be after the commission of the offence, as if the offence had been committed where such trial shall take place.

8. Every general court-martial convened within the United Kingdom or the British Isles shall consist of not less than nine commissioned officers, each of whom shall have held a commission for three years before the date of the assembly of the court. Every general court-martial shall have power to sentence any officer or soldier to suffer death, penal servitude, imprisonment, forfeiture of pay or pension, or any other punishment which shall accord with the usage of the service: No sentence of death by a court-martial shall pass unless two thirds at least of the officers present shall concur therein; no sentence of penal servitude shall be for a period of less than five years; and no sentence of imprisonment shall be for a period longer than two years.

9. Every district or garrison court-martial convened within the United Kingdom or the British Isles shall consist of not less than seven commissioned officers, and shall have the same power as a general court-martial to sentence any soldier to such punishments as shall accord with the provisions of this Act: Provided always, that no such district or garrison court-martial shall have power to try a commissioned officer, or to pass any sentence of death or penal servitude.

10. A regimental or detachment court-martial shall consist of not less than five commissioned officers, unless it is found to be impracticable to assemble that number, in which case three shall be sufficient, and shall have power to sentence any soldier to corporal punishment, or to imprisonment, and to forfeiture of pay, in such manner as shall accord with the provisions of this Act.

11. In cases of mutiny, and insubordination accompanied with personal violence, or other offences committed on the line of march, or on board any transport ship, convict ship, merchant vessel, or troop ship, not in commission, the offender may be tried by a regimental or detach-

ment court-martial, and the sentence may be confirmed and carried into execution on the spot by the officer in the immediate command of the troops, provided that the sentence shall not exceed that which a regimental court-martial is competent to award.

12. It shall be lawful for any officer commanding any detachment or portion of troops serving in any place beyond seas where it may be found impracticable to assemble a general court-martial, upon complaint made to him of any offence committed against the property or person of any inhabitant of or resident in any country in which such troops are so serving by any person serving with or belonging to Her Majesty's armies, being under the immediate command of any such officer, to convene a detachment general court-martial, which shall consist of not less than three commissioned officers, for the purpose of trying any such person; and every such court-martial shall have the same powers in regard to sentence upon offenders as are granted by this Act to general courts-martial: Provided always, that no sentence of any such court-martial shall be executed until the general commanding the army of which such detachment or portion forms part shall have approved and confirmed the same.

13. All general and other courts-martial shall administer an oath to every witness or other person who shall be examined before such court in any matter relating to any proceeding before the same; and every person, as well civil as military, who may be required to give or produce evidence before a court-martial, shall, in the case of general courts-martial, be summoned by the judge advocate general, or his deputy, or the person officiating as judge advocate, and in the case of all other courts-martial by the president of the court; and all persons so summoned and attending as witnesses before any court-martial shall, during their necessary attendance in or on such courts, and in going to and returning from the same, be privileged from arrest, and shall, if unduly arrested, be discharged by the court out of which the writ or process issued by which such witness was arrested, or if such court be not sitting, then by any judge of the superior courts of Westminster or Dublin, or of the Court of Session in Scotland, or of the courts of law in the East or West Indies, or elsewhere, according as the case shall require, upon its being made to appear to such court or judge, by any affidavit in a summary way, that such witness was arrested in going to or attending upon or returning from such court-martial; and all witnesses so duly summoned as aforesaid who shall not attend on such courts, or attending shall refuse to be sworn, or being sworn shall refuse to give evidence, or not produce the documents under their power or

control required to be produced by them, or to answer all such questions as the court may legally demand of them, shall be liable to be attached in the Court of Queen's Bench in London or Dublin, or in the Court of Session or Sheriff or Stewart Courts in Scotland, or in courts of law in the East or West Indies, or in any of Her Majesty's colonies, garrisons, or dominions in Europe or elsewhere respectively, upon complaint made, in like manner as if such witness, after having been duly summoned or subpoenaed, had neglected to attend upon a trial in any proceeding in the court in which such complaint shall be made: Provided always, that nothing in this Act contained shall be construed to render an oath necessary in any case where by law a solemn affirmation may be made instead thereof: It shall be lawful for the president of any court-martial to administer an oath to a shorthand writer to take down, according to the best of his power, the evidence to be given before the court.

14. No officer or soldier who shall be acquitted or convicted of any offence shall be liable to be tried a second time by the same or any other court-martial for the same offence; and no finding, opinion, or sentence given by any court-martial, and signed by the president thereof, shall be revised more than once, nor shall any additional evidence in respect of any charge on which the prisoner then stands arraigned be received by the court on any revision.

15. If any person subject to this Act shall at any time during the continuance of this Act begin, excite, cause, or join in any mutiny or sedition in any forces belonging to Her Majesty's army, or Her Majesty's royal marines, or shall not use his utmost endeavours to suppress the same, or shall conspire with any other person to cause a mutiny, or coming to the knowledge of any mutiny or intended mutiny shall not, without delay, give information thereof to his commanding officer; or shall hold correspondence with or give advice or intelligence to any rebel or enemy of Her Majesty, either by letters, messages, signs, or tokens, in any manner or way whatsoever; or shall treat or enter into any terms with such rebel or enemy without Her Majesty's licence, or licence of the general or chief commander; or shall misbehave himself before the enemy; or shall shamefully abandon or deliver up any garrison, fortress, post, or guard committed to his charge, or which he shall have been commanded to defend; or shall compel the governor or commanding officer of any garrison, fortress, or post to deliver up to the enemy or to abandon the same; or shall speak words or use any other means to induce such governor or commanding officer, or others, to misbehave before the enemy;

or shamefully to abandon or deliver up any garrison, fortress, post, or guard committed to their respective charge, or which he or they shall be commanded to defend; or shall desert Her Majesty's service; or shall leave his post before being regularly relieved; or shall sleep on his post; or shall strike or shall use or offer any violence against his superior officer, being in the execution of his office, or shall disobey any lawful command of his superior officer; or who being confined in a military prison shall offer any violence against a visitor or other his superior military officer, being in the execution of his office; all and every person and persons so offending in any of the matters before mentioned, whether such offence be committed within this realm or in any other of Her Majesty's dominions, or in foreign parts, upon land or upon the sea, shall suffer death, or penal servitude, or such other punishment as by a court-martial shall be awarded: Provided always, that any non-commissioned officer or soldier attested for or in pay in any regiment or corps who shall, without having first obtained a regular discharge therefrom, enlist himself in any other regiment or corps, may be deemed to have deserted Her Majesty's service, and shall be liable to be punished accordingly.

16. In all cases where the punishment of death shall have been awarded by a general court-martial or detachment general court-martial it shall be lawful for Her Majesty, or, if in any place out of the United Kingdom or British Isles, for the commanding officer having authority to confirm the sentence, instead of causing such sentence to be carried into execution, to order the offender to be kept in penal servitude for any term not less than five years, or to suffer such term of imprisonment, with or without hard labour, and with or without solitary confinement, as shall seem meet to Her Majesty, or to the officer commanding as aforesaid.

17. Any officer or soldier of Her Majesty's army, or any person employed in the War Department, or in any way concerned in the care or distribution of any money, provisions, forage, arms, clothing, ammunition, or other stores belonging to Her Majesty's army or for Her Majesty's use, who shall embezzle, fraudulently misapply, wilfully damage, steal, or receive the same, knowing them to have been stolen, or shall be concerned therein or connive thereat, may be tried for the same by a general court-martial, and sentenced to be kept in penal servitude for any term not less than five years, or to suffer such punishment of fine, imprisonment with or without hard labour, dismissal from Her Majesty's service, reduction to the ranks if a warrant or non-commissioned officer, as such court shall think fit,

according to the nature and degree of the offence; and every such offender shall, in addition to any other punishment, make good at his own expense the loss and damage sustained, and in every such case the court is required to ascertain by evidence the amount of such loss or damage, and to declare by their sentence that such amount shall be made good by such offender; and the loss and damage so ascertained as aforesaid shall be a debt to Her Majesty, and may be recovered in any of Her Majesty's courts at Westminster or in Dublin, or the Court of Exchequer in Scotland, or in any court in Her Majesty's colonies, or in India, where the person sentenced by such court-martial shall be resident, after the said judgment shall be confirmed and made known, or the offender, if he shall remain in the service, may be put under stoppages not exceeding one half of his pay and allowances until the amount so ascertained shall be recovered.

18. Whenever Her Majesty shall intend that any sentence of penal servitude heretofore or hereafter passed upon any offender by any court-martial shall be carried into execution for the term specified in such sentence or for any shorter term, or shall be graciously pleased to commute as aforesaid to penal servitude any sentence of death passed by any such court, the sentence, together with Her Majesty's pleasure thereupon, shall be notified in writing by the officer commanding in chief Her Majesty's army in Great Britain and Ireland, or by the adjutant general, or by the Secretary of State for the War Department, to any judge of the Queen's Bench, Common Pleas, or Exchequer in England or Ireland, and thereupon such judge shall make an order for the penal servitude of such offender in conformity with such notification, and shall do all such other acts consequent upon such notification as such judge is authorised to do by any Act in force touching the penal servitude of other offenders; and it shall be lawful for any judge of the Queen's Bench, Common Pleas, or Exchequer in Ireland to make an order that any such offender convicted in Ireland shall be kept in penal servitude in England; and such order shall be in all respects as effectual in England as though such offender had been convicted in England, and the order had been made by any judge of the Queen's Bench, Common Pleas, or Exchequer in England; and the person in whose custody such offender shall at that time be, and all other persons whatsoever whom the said order may concern, shall be bound to obey and shall be assistant in the execution thereof, and shall be liable to the same punishment for disobedience to or for interrupting the execution of such order as if the order had been made under the authority of any such Act as aforesaid; and every person so ordered to be kept in penal servitude shall be subject to every

provision made by law and in force concerning persons under sentence of penal servitude; and from the time when such order of penal servitude shall be made every Act in force touching the escape of felons, or their afterwards returning or being at large without leave, shall apply to such offender, and to all persons aiding and abetting, contriving or assisting in any escape or intended escape or returning without leave of any such offender; and the judge who shall make any order of penal servitude as aforesaid shall direct the notification of Her Majesty's pleasure, and his own order made thereupon, to be filed and kept of record in the office of the Clerk of the Crown of the Court of Queen's Bench; and the said clerk shall have a fee of two shillings and sixpence only for filing the same, and shall, on application, deliver a certificate in writing (not taking more than two shillings and sixpence for the same) to such offender or to any person applying in his or Her Majesty's behalf, showing the christian and surname of such offender, his offence, the place where the court was held before which he was convicted, and the conditions on which the order of penal servitude was made; which certificate shall be sufficient proof of the conviction and sentence of such offender, and also of the terms on which such order for his penal servitude was made, in any court and in any proceeding wherein it may be necessary to inquire into the same.

19. Whenever any sentence of penal servitude heretofore or hereafter passed upon any offender by any court-martial holden in any part of Her Majesty's foreign dominions, or elsewhere beyond the seas, is to be carried into execution for the term specified in such sentence or for any shorter term, or when sentence of death passed by any such court-martial has been or shall as aforesaid be commuted to penal servitude, the same shall be notified by the officer commanding Her Majesty's forces at the presidency or station where the offender may come or be, or in his absence by the adjutant general for the time being, if in India to the chief judge or any judge of the chief civil court of the presidency or province in which the court-martial shall have been held, and if in any other part of Her Majesty's dominions to the chief justice or some other judge therein, and such judge shall make order for the intermediate custody and penal servitude of such offender; and the offender shall, until handed over in pursuance of any such order to the civil authorities, be detained in military custody, and may be moved in such custody from place to place as circumstances may require; and upon any such order being made it shall be duly notified to the governor of the presidency if in India, or to the governor of the colony if in any of Her Majesty's colonies, or to the person who shall for the time

being be exercising the office of governor of such presidency or colony, who, on receipt of such notification, shall cause such offender to be removed or sent to some other colony or place, or to undergo his sentence within the presidency or colony where the offender was so sentenced, or where he may come or be as aforesaid, in obedience to the directions for the removal and treatment of convicts which shall from time to time be transmitted from Her Majesty through one of Her Principal Secretaries of State to such presidency or colony; and such offender shall according to such directions undergo the sentence of penal servitude which shall have been passed upon him either in the presidency or colony in which he has been so sentenced, or in the colony or place to which he has been so removed or sent, and whilst such sentence shall remain in force shall be liable to be imprisoned, and kept to hard labour, and otherwise dealt with under such sentence, in the same manner as if he had been sentenced to be imprisoned with hard labour during the term of his penal servitude by the judgment of a court of competent jurisdiction in such presidency or colony, or in the colony or place to which he has been so removed or sent respectively; and elsewhere out of Her Majesty's dominions the officer commanding shall have power to make an order in writing for the penal servitude or intermediate custody of such offender; and such offender shall be liable by virtue of such order to be imprisoned, and kept to hard labour, and otherwise dealt with under the sentence of the court, in the same manner as if he had been sentenced to be imprisoned with hard labour during the term of his penal servitude by the judgment of a court of competent jurisdiction in the place where he may be ordered to be kept in such intermediate custody, or in the place to which he may be removed for the purpose of undergoing his sentence of penal servitude. If any prisoner shall be brought to any place in the United Kingdom there to undergo any sentence of penal servitude which has been passed upon him by a court-martial held elsewhere, and the judge's or officer's order herein-before prescribed for his penal servitude and intermediate custody shall not be forthcoming, and the judge advocate general, upon application for that purpose, shall certify that it appears from the original proceedings of the court-martial whereby the prisoner was tried that he has been duly sentenced to penal servitude, and that for anything that appears to the contrary thereon such sentence is still in force against the said prisoner for the period to be stated in such certificate, then it shall be lawful for one of Her Majesty's Principal Secretaries of State, upon consideration of such certificate, to direct, in writing under his hand, that the said prisoner shall be at once removed to a convict prison, and be imprisoned and kept to hard labour according to the sentence stated in

such certificate, and thereupon the prisoner shall be removed to such convict prison, and shall be liable to be imprisoned and kept to hard labour, and be otherwise dealt with during the term of his sentence, as if he had been sentenced to a like term of penal servitude by a competent court in the United Kingdom.

20. In any case where a sentence of penal servitude shall have been awarded by a general or detachment general court-martial it shall be lawful for Her Majesty, or, if in any place out of the United Kingdom or British Isles, for the officer commanding in chief Her Majesty's forces there serving, instead of causing such sentence to be carried into execution, to order that the offender be imprisoned, with or without hard labour, and with or without solitary confinement, for such term not exceeding two years as shall seem meet to Her Majesty, or to the officers commanding as aforesaid.

21. Where an award of any forfeiture, or of deprivation of pay or of stoppages of pay, shall have been added to any sentence of penal servitude, it shall be lawful for Her Majesty, or, if in any place out of the United Kingdom or British Isles, for the officer commanding in chief Her Majesty's forces there serving, in the event of the sentence being commuted for imprisonment, to order such award of forfeiture, deprivation of pay, or stoppages of pay to be enforced, mitigated, or remitted, as may be deemed expedient.

22. No court-martial shall, for any offence whatever committed under this Act during the time of peace within the Queen's dominions, have power to sentence any soldier to corporal punishment; provided that any court-martial may sentence any soldier to corporal punishment while on active service in the field, or on board any ship not in commission, for mutiny, insubordination, desertion, drunkenness on duty or on the line of march, disgraceful conduct, or any breach of the Articles of War; and no sentence of corporal punishment shall exceed fifty lashes.

23. It shall be lawful for any general, district, or garrison court-martial, in addition to any sentence of corporal punishment, to award imprisonment, with or without hard labour, and with or without solitary confinement, such confinement not exceeding the periods prescribed by the Articles of War.

24. In all cases in which corporal punishment shall form the whole or part of the sentence awarded by any court-martial it shall be lawful for Her Majesty, or for the general or other officer authorised to confirm the sentences of courts-martial, to commute such corporal punish-



ment to imprisonment for any period not exceeding forty-two days, with or without hard labour, and with or without solitary confinement, or to mitigate such sentence, or instead of such sentence to award imprisonment for any period not exceeding twenty days, with or without hard labour, and with or without solitary confinement and corporal punishment, to be inflicted in the prison, not exceeding twenty-five lashes, and the solitary confinement herein-before mentioned shall in no case exceed seven days at a time, with intervals of not less than seven days between each period of such confinement.

25. It shall be lawful for Her Majesty in all cases whatsoever, instead of causing a sentence of cashiering to be put in execution, to order the offender to be reprimanded, or, in addition thereto, to suffer such loss of army or regimental rank, or both, as may be deemed expedient.

26. On the first and on every subsequent conviction for desertion the court-martial, in addition to any other punishment, may order the offender to be marked two inches below and one inch in rear of the nipple of the left breast with the letter D, such letter not to be less than an inch long, and to be marked upon the skin with some ink or gunpowder, or other preparation, so as to be clearly seen, and not liable to be obliterated; a court-martial may, upon sentencing any offender to be discharged with ignominy, also sentence him to be marked on the right breast with the letters B C; and the confirming officer may order such sentence, both in respect of the discharge and of the marking, to be carried into effect.

27. A general, garrison, or district court-martial may sentence any soldier to imprisonment, with or without hard labour, and with or without solitary confinement, but such solitary confinement shall not exceed the periods prescribed by the Articles of War; and any regimental or detachment court-martial may sentence any soldier to imprisonment, with or without hard labour, for any period not exceeding forty-two days, and with or without solitary confinement not exceeding the periods prescribed by the Articles of War.

28. Whenever sentence shall be passed by a court-martial on an offender already under sentence either of imprisonment or of penal servitude, the court may award a sentence of imprisonment or penal servitude for the offence for which he is under trial, to commence at the expiration of the imprisonment or penal servitude to which he shall have been so previously sentenced, although the aggregate of the terms of imprisonment or penal servitude respectively may exceed

the term for which any of those punishments could be otherwise awarded. Whenever Her Majesty, or any general or other officer authorised to confirm the sentences of courts-martial, shall commute a sentence of penal servitude or corporal punishment to imprisonment, and the offender whose sentence shall be so commuted shall, at the time of such commutation, be under sentence of imprisonment or penal servitude, it shall be lawful for Her Majesty, or the general or other officer who shall so commute such sentence, to direct that such commuted sentence of imprisonment shall commence at the expiration of the imprisonment or penal servitude to which such prisoner shall have been so previously sentenced, although the aggregate of the term of imprisonment or penal servitude respectively may exceed the term for which any of those punishments could be otherwise awarded.

29. It shall be lawful for the Secretary of State for the War Department, and in India for the Governor General in Council, to set apart any buildings now erected or which may hereafter be erected, or any part or parts thereof, as military prisons, and to declare that any building or any two or more buildings shall be and thenceforth such building or buildings shall be deemed and taken to be a military prison; and every military prison which, under the provisions of any former Act of Parliament, has been or which shall be so as aforesaid set apart and declared, shall be deemed to be a public prison within the meaning of this Act; and all and every the powers and authorities with respect to county gaols or houses of correction which now are or which may hereafter be vested in any of Her Majesty's Principal Secretaries of State shall, with respect to all such military prisons, belong to and may be exercised by the Secretary of State for the War Department, and in India by the Governor General in Council; and it shall be lawful for the said Secretary of State, and in India for the Governor General in Council, from time to time to make, alter, and repeal rules and regulations for the government and superintendence of any such military prison, and of the governor, provost marshal, officers, and servants thereof, and of the offenders confined therein, which said rules and regulations so made as aforesaid shall remain and continue to be in force until the same are altered or repealed by Her Majesty's said Secretary of State for War, or in India by the Governor General in Council; and it shall be lawful for the said Secretary of State, and in India for the Governor General in Council, from time to time to appoint an inspector general and inspectors of military prisons, and a governor, or provost marshal, and all other necessary officers and servants for any such military prison, and, as occasion may arise, to remove the governor or

provost marshal, officer or servant of any such military prison; and the general or other officer commanding any district or station within which may be any such military prison, or such general or other officer, and such other person or persons as the said Secretary of State, and in India the Governor General in Council, may from time to time appoint, shall be a visitor or visitors of such prison; and the said Secretary of State, and in India the Governor General in Council, may authorise any general officer commanding to appoint periodically visitors to any military prison within his command; and the said Secretary of State, and in India the Governor General in Council or the general officer so appointing, shall transmit to the visitor or visitors of every military prison established by his authority a copy of the rules and regulations which are to be observed and enforced, and the same shall accordingly be observed and enforced, within such prison; and every inspector, visitor, and governor of any such military prison shall, subject to such rules and regulations as may from time to time be made by the said Secretary of State, or in India by the Governor General in Council, have and exercise in respect of such prison, and of the governor, officers, and servants thereof, and of the prisoners confined therein, all the powers and authorities, as well in respect of administering oaths as otherwise, which any inspector, visiting justice, or governor of a county gaol or house of correction may respectively exercise as such.

30. Every governor, provost marshal, gaoler, or keeper of any public prison or of any gaol or house of correction in any part of Her Majesty's dominions shall receive into his custody any military offender under sentence of imprisonment by a court-martial, upon delivery to him of an order in writing in that behalf from the general commanding in chief, or the adjutant general, or the officer who confirmed the proceedings of the court, or the officer commanding the regiment or corps to which the offender belongs or is attached, which order shall specify the offence of which he shall have been convicted, and the sentence of the court, and the period of imprisonment which he is to undergo, and the day and hour of the day on which he is to be released; and such governor, provost marshal, gaoler, or keeper shall keep such offender in a proper place of confinement, with or without hard labour, and with or without solitary confinement, according to the sentence of the court and during the time specified in the said order, or until he be discharged or delivered over to other custody before the expiration of that time under an order duly made for that purpose; and whenever troops are called out in aid of the civil power, or are stationed in billets, or are on the line of march, every governor, provost marshal, gaoler, or keeper of

any public prison, gaol, house of correction, lock-up house, or other place of confinement, shall receive into his custody any soldier for a period not exceeding seven days, upon delivery to him of an order in writing on that behalf from the officer commanding such troops.

31. In the case of a prisoner undergoing imprisonment under the sentence of a court-martial in any public prison other than the military prisons set apart by the authority of this Act, or in any gaol or house of correction in any part of the United Kingdom, it shall be lawful for the general commanding in chief, or the adjutant general, or the officer who confirmed the proceedings of the court, or the officer commanding the district or garrison in which such prisoner may be, to give, as often as occasion may arise, an order in writing directing that the prisoner be discharged, or be delivered over to military custody, whether for the purpose of being removed to some other prison or place in the United Kingdom, there to undergo the remainder or any part of his sentence, or for the purpose of being brought before a court-martial either as a witness or for trial; and in the case of a prisoner undergoing imprisonment or penal servitude under the sentence of a court-martial in any public prison other than such military prison as aforesaid, or in any gaol or house of correction in any part of Her Majesty's dominions other than the United Kingdom, it shall be lawful for the general commanding in chief or the adjutant general of Her Majesty's forces in the case of any such prisoner, and for the Commander-in-Chief in India in the case of any prisoner so confined in any part of Her Majesty's Indian dominions, and for the general commanding in chief in any presidency in India in the case of a prisoner so therein confined, and for the officer commanding in chief or the officer who confirmed the proceedings of the court at any foreign station in the case of a prisoner so there confined, to give as often as occasion may arise an order in writing directing that the prisoner be discharged or be delivered over to military custody, whether for the purpose of being removed to some other prison or place in any part of Her Majesty's dominions, there to undergo the remainder or any part of his sentence, or for the purpose of being brought before a court-martial either as a witness or for trial; and in the case of any prisoner who shall be removed by any such order from any such prison, gaol, or house of correction either within the United Kingdom or elsewhere to some other prison or place either in the United Kingdom or elsewhere, the officer who gave such order shall also give an order in writing directing the governor, provost marshal, gaoler, or keeper of such other prison or place to receive such prisoner into his custody, and specifying the

offence of which such prisoner shall have been convicted, and the sentence of the court, and the period of imprisonment which he is to undergo, and the day and the hour on which he is to be released; and such governor, provost marshal, gaoler, or keeper shall keep such offender in a proper place of confinement, with or without hard labour, and with or without solitary confinement, according to the sentence of the court, and during the time specified in the said order, or until he be duly discharged or delivered over to other custody before the expiration of that time under an order duly made for that purpose; and in the case of a prisoner undergoing imprisonment or penal servitude under the sentence of a court-martial in any military prison in any part of Her Majesty's dominions, the Secretary of State for the War Department, or the general officer commanding the district or station in which the prison may be situated, shall have the like powers in regard to the discharge and delivery over of such prisoners to military custody as may be lawfully exercised by any of the military authorities above mentioned in respect of any prisoners undergoing confinement as aforesaid in any public prison other than a military prison, or in any gaol or house of correction in any part of Her Majesty's dominions; and such prisoner in any of the cases herein-before mentioned shall accordingly, on the production of any such order as is herein-before mentioned, be discharged or delivered over, as the case may be: Provided always, that the time during which any prisoner under sentence of imprisonment by a court-martial shall be detained in such military custody under such order as aforesaid shall be reckoned as imprisonment under the sentence for whatever purpose such detention shall take place; and such prisoner may during such time, either when on board ship or otherwise, be subjected to such restraint as is necessary for his detention and removal.

32. The gaoler or keeper of any public prison, gaol, house of correction, lock-up house, or other place of confinement in any part of Her Majesty's dominions shall diet and supply every soldier imprisoned therein under the sentence of a court-martial or as a deserter with fuel and other necessities according to the regulations of such place of confinement, and shall receive on account of every soldier, out of the subsistence of such soldier during the period of his imprisonment, in Great Britain and Ireland, one shilling per diem, and in other parts of Her Majesty's dominions sixpence per diem: Provided also, that in all cases where such soldier is sentenced to be discharged from the army on the completion of his term of imprisonment, the Secretary of State for the War Department may cause to be issued out of army votes, upon application in writing, signed

by any justice within whose jurisdiction such place of confinement shall be locally situated, together with a copy of the order of commitment, a further sum not exceeding sixpence per diem, and which said sum of one shilling or of sixpence, and the further sum, if any, as the case may be, shall be carried to the credit of the fund from which the expense of such place of confinement is defrayed. In India the expenses incurred under the provisions of this section shall be paid in the same manner as the other expenses of such prison, or as may be provided by the laws or regulations to be made in that behalf.

33. Every gaoler or keeper of any public prison, gaol, house of correction, or other place of confinement, to whom any notice shall have been given, or who shall have reason to know or believe, that any person in his custody for any offence, civil or military, is a soldier liable to serve Her Majesty on the expiration of his imprisonment, shall forthwith, or as soon as may be, give, if in Great Britain, to the Secretary of State for the War Department, and if in Ireland to the general commanding Her Majesty's forces in Ireland, or if in India to the adjutant general of the army, or to the nearest military authority with whom it may be convenient to communicate, notice of the day and hour on which the imprisonment of such person will expire; and every such gaoler or keeper is hereby required to use his best endeavours to ascertain and report in all cases where practicable the particular regiment or corps, battalion of a regiment or battery of artillery, to which such soldier belongs, and also whether he belongs to the depot or the head quarters of his regiment; and in the event of his being a recruit who has not joined, that it may be so stated in his report, together with the name of the place where the man enlisted. In all cases where the soldier in custody is under sentence to be discharged from the service on the completion of his term of imprisonment, and the discharge document is in the hands of the gaoler, such gaoler shall not be required to make any report thereof to the Secretary of State for War, or to the military authorities herein-before referred to.

34. Upon reasonable suspicion that a person is a deserter it shall be lawful for any constable, or if no constable can be immediately met with, then for any officer or soldier in Her Majesty's service, or other person, to apprehend or cause to be apprehended such suspected person, and forthwith to bring him or cause him to be brought before any justice living in or near the place where he was so apprehended and acting for the county, city, district, place, or borough wherein such place is situate, or for the county adjoining such first-mentioned county or such borough; and such justice is hereby authorised and re-

quired to inquire whether such suspected person is a deserter, and from time to time to defer the said inquiry and to remand the said suspected person in the manner prescribed by an Act passed in the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-two, section twenty-one, and subject to every provision therein contained; and if it shall appear to the satisfaction of such justice by the testimony of one or more witnesses taken upon oath, or by the confession of such suspected person, confirmed by some corroborative evidence upon oath or by the knowledge of such justice, that such suspected person is a deserter, such justice shall forthwith cause him to be conveyed in civil custody to the head quarters or depôt of the regiment or corps to which he belongs, if stationed within a convenient and easily accessible distance from the place of commitment, or if not so stationed then to the nearest or most convenient public prison (other than a military prison set apart under the authority of this Act) or police station legally provided as a lock-up house for temporary confinement of persons taken into custody, whether such prison or police station be in the county or borough in which such suspected person was apprehended or in which he was committed, or not; or if the deserter has been apprehended by a party of soldiers of his own regiment or corps in charge of a commissioned officer, such justice may deliver him up to such party, unless the officer shall deem it necessary to have the deserter committed to prison for safe custody; and such justice shall transmit an account of the proceedings, in the form prescribed in the schedule annexed to this Act, to the Secretary of State for the War Department, specifying therein whether such deserter was delivered to his regiment or corps, or to the party of his regiment or corps, in order to his being taken to the head quarters or depôt of his regiment or corps, or whether such deserter was committed to prison, to the end that the person so committed may be removed by an order from the office of the said Secretary of State, and proceeded against according to law; and such justice shall also send to the said Secretary of State a report stating the names of the persons by whom or by or through whose means the deserter was apprehended and secured; and the said Secretary of State shall transmit to such justice an order for the payment to such persons of such sum not exceeding forty shillings as the said Secretary of State shall be satisfied they are entitled to according to the true intent and meaning of this Act; and for such information, commitment, and report as aforesaid the clerk of the said justice shall be entitled to a fee of two shillings and no more; and every gaoler and other person into whose custody any person charged with desertion is committed shall immediately upon the receipt of the person so

charged into his custody pay such fee of two shillings, and also upon the production of a receipt from the medical practitioner who, in the absence of a military medical officer, may have been required to examine such suspected person, a fee of two shillings and sixpence, and shall notify the fact to the Secretary of State for the War Department, and transmit also to the said Secretary of State a copy of the commitment, to the end that such Secretary of State may order repayment of such fees; and when any such person shall be apprehended and committed as a deserter in any part of Her Majesty's foreign dominions the justice shall forthwith cause him to be conveyed to some public prison, if the regiment or corps to which he is suspected to belong shall not be in such part, or, if the regiment or corps be in such part, the justice may deliver him into custody at the nearest military post if within reasonable distance, although the regiment to which such person is suspected to belong may not be stationed at such military post; and such justice shall in every case transmit to the general or other officer commanding a descriptive return in the form prescribed in the schedule to this Act annexed, to the end that such person may be removed by order of such officer, and proceeded against according to law; and such descriptive return purporting to be duly made and subscribed in accordance with the Act shall, in the absence of proof to the contrary, be deemed sufficient evidence of the facts and matters therein stated: Provided always, that any such person so committed as a deserter in any part of Her Majesty's dominions shall, subject to the provisions herein-after contained, be liable to be transferred by order of the general or other officer commanding to serve in any regiment or corps or depôt nearest to the place where he shall have been apprehended, or to any other regiment or corps to which it may be desirable that he should be transferred, and shall also be liable after such transfer of service to be tried and punished as a deserter.

35. Every gaoler or keeper of any public prison, gaol, house of correction, lock-up house, or other place of confinement in any part of Her Majesty's dominions is hereby required to receive and confine therein every deserter who shall be delivered into his custody by any soldier or other person conveying such deserter under lawful authority, on production of the warrant of the justice of the peace on which such deserter shall have been taken, or some order from the office of the Secretary of State for the War Department, which order shall continue in force until the deserter shall have arrived at his destination; and such gaoler or keeper shall be entitled to one shilling for the safe custody of the said deserter while halted on the march, and to such subsistence for

his maintenance as shall be directed by Her Majesty's regulations.

36. Any recruit for Her Majesty's army who, having been attested or received pay other than enlisting money, shall desert before joining the regiment or corps for which he has enlisted, shall, on being apprehended, and committed for such desertion by any justice of the peace upon the testimony of one or more witnesses upon oath, or upon his own confession, forfeit his personal bounty, and be liable to be transferred to any regiment or corps or dépôt nearest to the place where he shall have been apprehended, or to any other regiment or corps to which Her Majesty may deem it more desirable that he should be transferred: Provided always, that such deserters thus transferred shall not be liable to other punishment for the offence, or to any other penalty except the forfeiture of their personal bounty.

37. Any person who shall confess himself to be a deserter from Her Majesty's forces, or from the embodied militia, shall be liable to be taken before any two justices of the peace acting for the county, district, city, burgh, or place where any such person shall at any time happen to be when he shall be brought before them, and on proof that any such confession as aforesaid was false shall by the said justices be adjudged to be punished, if in England, as a rogue and vagabond, and if elsewhere by commitment to some prison or house of correction, there to be kept to hard labour for any time not exceeding three calendar months; and if, when such person shall be brought before the said justices, it shall be proved to their satisfaction that such confession has been made, but evidence of the truth or falsehood of such confession shall not at that time be forthcoming, such justices within the United Kingdom are hereby required to remand such person in the manner herein-before mentioned, and to transmit a statement of the case and descriptive return to the Secretary of State for the War Department, with a request to be informed whether such person appears to belong or to have belonged to the regiment or corps from which he shall have so confessed himself to have deserted; and a letter from the War Office in reply thereto, referring to such statement, and purporting to be signed by or on behalf of the Secretary of State for the War Department, shall be admissible in evidence against such person, and shall be deemed to be legal evidence of the facts stated therein, and on the receipt thereof the said justices shall forthwith proceed to adjudicate upon the case. In India the authority herein given to two justices may be exercised by one European justice or magistrate.

38. When there shall not be any military officer of rank not inferior to captain, or any adjutant of regular militia, within convenient distance of the place where any non-commissioned officer or soldier on furlough shall be detained by sickness or other casualty rendering necessary any extension of such furlough, it shall be lawful for any justice who shall be satisfied of such necessity to grant an extension of furlough for a period not exceeding one month; and the said justice shall by letter immediately certify such extension and the cause thereof to the commanding officer of the corps or detachment to which such non-commissioned officer or soldier belongs, if known, and if not then to the agent of the regiment or corps, in order that the proper sum may be remitted to such non-commissioned officer or soldier, who shall not during the period of such extension of furlough be liable to be treated as a deserter: Provided always, that nothing herein contained shall be construed to exempt any soldier from trial and punishment, according to the provisions of this Act, for any false representation made by him in that behalf to the said justice, or for any breach of discipline committed by him in applying for and obtaining the said extension of furlough.

39. No person subject to this Act, having been acquitted or convicted of any crime or offence by the civil magistrate, or by the verdict of a jury, shall be liable to be again convicted for the same crime or offence by a court-martial, or to be punished for the same otherwise than by cashiering in the case of a commissioned officer, or in the case of a warrant officer by reduction to an inferior class or to the rank of a private soldier by order of the Commander-in-Chief, or in the case of a non-commissioned officer by reduction to the ranks by order of the Commander-in-Chief or of the colonel, or in the militia by order of the appointed commandant of the regiment or corps; and whenever any officer or soldier shall have been tried by any court of ordinary criminal jurisdiction, the clerk of such court or other officer having the custody of the records of such court, or the deputy of such clerk, shall, if required by the officer commanding the regiment or corps to which such officer or soldier shall belong, transmit to him a certificate setting forth the offence of which the prisoner was convicted, together with the judgment of the court thereon if such officer or soldier shall have been convicted, or of the acquittal of such officer or soldier, and shall be allowed for such certificate a fee of three shillings.

40. Any person attested for Her Majesty's army, or serving on the permanent staff of the disembodied militia or volunteers other than as a commissioned officer, shall be liable to be taken out of Her Majesty's service only by process or

execution on account of any charge of felony or of misdemeanor, or of any crime or offence other than the misdemeanor of absenting himself from his service, or neglecting to fulfil his contract, or otherwise misconducting himself respecting the same, or the misdemeanor of refusing to comply with an order of justices for the payment of money, or on account of an original debt proved by affidavit of the plaintiff or of some one on his behalf to amount to the value of thirty pounds at the least, over and above all costs of suit, such affidavit to be sworn, without payment of any fee, before some judge of the court out of which process or execution shall issue, or before some person authorised to take affidavits in such court, of which affidavit, when duly filed in such court, a memorandum shall, without fee, be endorsed upon the back of such process, stating the facts sworn to, and the day of filing such affidavit; but no soldier or other person as aforesaid shall be liable by any process whatever to appear before any justice of the peace or other authority whatever, or to be taken out of Her Majesty's service by any writ, summons, warrant, order, judgment, execution, or any process whatsoever issued by or by the authority of any court of law, or any magistrate, justice or justices of the peace, or any other authority whatsoever, for any original debt not amounting to thirty pounds, or for not supporting or maintaining, or for not having supported or maintained, or for leaving or having left chargeable to any parish, township, or place, or to the common fund of any union, any relation or child which such soldier or person might, if not in Her Majesty's service, be compellable by law to relieve or maintain, or for neglecting to pay to the mother of any bastard child, or to any person who may have been appointed to have the custody of such child, any sum to be paid in pursuance of an order on that behalf, or for the breach of any contract, covenant, agreement, or other engagement whatever by parol or in writing, or for having left or deserted his employer or master, or his contract, work, or labour, or misconducting himself respecting the same, except in the case of an apprentice, or of an indentured labourer, as herein-after described; and all summonses, warrants, commitments, indictments, convictions, judgments, and sentences on account of any of the matters for which it is herein declared that a soldier or other person as aforesaid is not liable to be taken out of Her Majesty's service shall be utterly illegal, and null and void, to all intents and purposes; and any judge of any such court may examine into any complaint made by a soldier or by his superior officer, and by warrant under his hand discharge such soldier, without fee, he being shown to have been arrested contrary to the intent of this Act, and shall award reasonable costs to such complainant, who shall have for the recovery thereof the like remedy as

would have been applicable to the recovery of any costs which might have been awarded against the complainant in any judgment or execution as aforesaid, or a writ of habeas corpus ad subjiciendum shall be awarded or issued, and the discharge of any such soldier out of custody shall be ordered thereupon; provided that any plaintiff, upon notice of the cause of action first given in writing to any soldier, or left at his last quarters, may proceed in any action or suit to judgment, and have execution other than against the body or military necessities or equipments of such soldier; provided also, that nothing herein contained relating to the leaving or deserting a master or employer, or to the breach of any contract, agreement, or engagement, shall apply to persons who shall be really and bona fide apprentices, duly bound, under the age of twenty-one years, or to indentured labourers, as herein-after prescribed.

41. No person who shall be commissioned and in full pay as an officer shall be capable of being nominated or elected to be sheriff of any county, borough, or other place, or to be mayor, portreeve, alderman, or to hold any office in any municipal corporation in any city, borough, or place in Great Britain or Ireland.

42. Every person authorised to enlist recruits shall first ask the person offering to enlist whether he belongs to the militia, and also such other questions as the military authorities may direct to be put to recruits, and shall immediately after giving him enlisting money serve him with a notice in the form set forth in the schedule to this Act annexed.

43. Every person who shall receive enlisting money in manner aforesaid, knowing it to be such, shall, subject to the provisions herein-after contained, upon such receipt be deemed to be enlisted as a soldier in Her Majesty's service, and while he shall remain with the recruiting party shall be entitled to be billeted.

44. Every person so enlisted as aforesaid shall, within ninety-six hours (any intervening Sunday, Christmas Day, or Good Friday not included), but not sooner than twenty-four hours after such enlistment, appear, together with some person employed in the recruiting service, before a justice of the peace, not being an officer of the army, for the purpose of being attested as a soldier, or of objecting to his enlistment.

45. When a recruit upon appearing before a justice for the purposes aforesaid shall dissent from or object to his enlistment, and shall satisfy the justice that the same was effected in any respect irregularly, he shall forthwith discharge

the recruit absolutely, and shall report such discharge to the inspecting field officer of the district, or in the case of a recruit enlisted at the head quarters or depôt of a regiment to the officer commanding the same; but if the recruit so dissenting shall not allege or shall not satisfy the justice that the enlistment was effected irregularly, nevertheless, upon repayment of the enlisting money, and of any sum received by him in respect of pay, and of a further sum of twenty shillings as smart money, he will be entitled to be discharged, and the sum paid by such recruit upon his discharge shall be kept by the justice, and, after deducting therefrom one shilling as the fee for reporting the payment to the Secretary of State for the War Department and to the inspecting field officer of the district, shall be paid over to any person belonging to the recruiting party who may demand the same; and the justice who shall discharge any recruit shall in every case give a certificate thereof, signed with his hand, to the recruit, specifying the cause thereof.

46. Any person may be enlisted for some particular arm or branch of service, and if he shall enlist for cavalry or infantry he shall be at liberty to declare and state the particular regiment of cavalry or infantry into which he desires to enlist, and he shall be attested for the same, and be sent thereto with all convenient speed; but if no such statement or declaration be made by such person at the time of his attestation as aforesaid, then he shall be attested for general service, and it shall be lawful for the military authorities at any time within twelve months after his attestation to attach him to such arm or branch of service, or to such regiment of cavalry or infantry, excluding colonial corps, as to them shall seem to be most fitting and convenient for Her Majesty's service: Provided always, that after the recruit shall have been attached to any regiment he shall not be removed or transferred therefrom, save and except under the provisions of any statute for the time being in force.

If the recruit on appearing before a justice shall not dissent from his enlistment, or dissenting shall within twenty-four hours return and state that he is unable to pay the sums mentioned in the last section, he shall be attested as follows: the justice, or some person deputed by him, shall read to the recruit the questions set forth in the form contained in the schedule to this Act annexed, cautioning him that if he fraudulently make any false answer thereto he shall be liable to be punished as a rogue and a vagabond; and the answers of the recruits shall be recorded opposite to the said questions, and the justice shall require the recruit to make and sign the declaration in the said form, and shall then administer to him the oath of allegiance in the

said form; and when the recruit shall have signed the said declaration, and taken the said oath, the justice shall attest the same by his signature, and shall deliver to the recruiting officer the declaration so signed and attested; and the fee for such attestation, including the declaration and oath, shall be one shilling and no more; and any recruit shall, if he so wish, be furnished with a certified copy of the above-mentioned declaration by the officer who finally approved of him for the service.

47. No recruit, unless he shall have been attested or shall have received pay other than enlisting money, shall be liable to be tried by court-martial; but if any recruit previously to his being attested shall by means of any false answer obtain enlistment money, or shall make any false statement in his declaration, or shall refuse to answer any question duly authorised to be put to recruits for the purpose of filling up such declaration, or shall refuse or neglect to go before a justice for the purposes aforesaid, or having dissented from his enlistment shall wilfully omit to return and pay such money as aforesaid, in any of such cases it shall be lawful for any two justices within the United Kingdom, or for any one justice out of the United Kingdom, acting for the county, district, city, burgh, or place where any such recruit shall at any time happen to be, to adjudge such recruit, when he shall be brought before them or him, if in England, to be a rogue and vagabond, and to sentence him to be punished accordingly, and if in Scotland or Ireland, or elsewhere in Her Majesty's dominions, to be imprisoned with hard labour in any prison or house of correction for any period not exceeding three calendar months; and the declaration made by the recruit on his attestation purporting to be made and subscribed in accordance with the schedule to this Act annexed shall, in the absence of proof to the contrary, be deemed sufficient evidence of such recruit having represented the several particulars as stated in such declaration.

48. Any recruit who shall have been attested, and who shall afterwards be discovered to have given any wilfully false answer to any question directed to be put to recruits, or shall have made any wilfully false statement in the declaration herein-before mentioned, shall be liable, at the discretion of the proper military authorities, to be proceeded against before two justices in the manner herein-before mentioned, and by them sentenced accordingly, or to be tried by a district or garrison court-martial for the same, and punished in such manner as such court shall direct.

49. If any recruit shall abscond, so that it is not possible immediately to apprehend and bring

him before a justice for attestation, the recruiting party shall produce to the justice before whom the recruit ought regularly to have been brought for that purpose a certificate of the name and place of residence and description of such recruit, and of his having absconded, and shall declare the same to be true; and the justice to whom such certificate shall be produced shall transmit a duplicate thereof to the Secretary of State for the War Department, in order that the same may appear in the "Police Gazette."

50. If any man while belonging to a militia regiment shall enlist in and be attested for Her Majesty's army, he shall be liable to be tried before a court-martial on a charge for desertion; but it shall be lawful for the Secretary of State for the War Department to give such general directions as may from time to time appear to him necessary for placing any man who confesses himself to be a militiaman under stoppage of one penny a day of his pay for eighteen calendar months, in lieu of his being tried by court-martial, and in case such militiaman shall have belonged to the Militia Reserve at the time of his attestation for placing him under a further stoppage of one penny a day for two hundred and forty days, and further to give general directions as to the manner in which such stoppages shall be applied, and whether, on making good the same, the man shall be returned to his militia regiment or be deemed to be a soldier in the same manner as if he had not been a militiaman at the time of his attestation: Provided that if the regiment of militia from which the man has deserted be within the United Kingdom, the Secretary of State for the War Department shall not make such latter order without the consent of the commanding officer of such regiment: Provided also, that every soldier who while belonging to a militia regiment enlisted in Her Majesty's army, whether such enlistment took place before or after the passing of the Mutiny Act, 1860, shall reckon service towards the performance of his limited engagement from the date of his attestation: Provided also, that any such soldier shall not reckon service for pension until the day on which his engagement for the militia would have expired; but if any such soldier shall subsequently to his enlistment have rendered long, faithful, or gallant service, the Secretary of State for War may, upon the special recommendation of the Commander-in-Chief, order that he may reckon service for pension from the date of his attestation. If any non-commissioned officer of the volunteer permanent staff enlists in Her Majesty's army he may be tried and punished as a deserter, but if he confesses his desertion the Secretary of State for the War Department, instead of causing him to be tried and punished as a deserter, may cause him to be returned to his service on the volunteer

permanent staff, to be there put under stoppages from his pay until he has repaid the amount of any bounty received by him and the expenses attending his enlistment, and also the value of any arms, &c. issued to him while on the volunteer permanent staff, and not duly delivered up by him; or may cause him to be held to his service in Her Majesty's army, with a direction, if it seems fit, that his time of service therein shall not be reckoned for pension until the time when his engagement on the volunteer permanent staff would have expired; and may further cause him to be put under stoppages of one penny a day of his pay until he has repaid the expense attending his engagement or attestation on the volunteer permanent staff, and also the value of any arms, clothing, or appointments issued to him while on the volunteer permanent staff, and not duly delivered up by him.

51. Every person subject to this Act who shall wilfully act contrary to any of its provisions in any matter relating to the enlisting or attesting of recruits for Her Majesty's army shall be liable to be tried for such offence before a general, district, or garrison court-martial, and to be sentenced to such punishments other than death or penal servitude as such courts may award.

52. It shall be lawful for any justice of the peace or person exercising the office of a magistrate within any of Her Majesty's dominions abroad, and in any colony for any other person duly authorised in that behalf by the governor or officer administering the government of such colony, and beyond the limits of Her Majesty's dominions for any British consul or person duly exercising the authority of a British consul, and in Her Majesty's dominions in India for any person duly authorised in that behalf by the governor general or lieutenant governor or other officer administering the government of any presidency, division, or province, and within the territories of any foreign state in India for the person performing the duties of the office of British resident therein, and for any other person duly authorised in that behalf by the governor general, to enlist and attest or to re-engage within the local limits of their several authorities any soldiers or persons desirous of enlisting or re-engaging in Her Majesty's army; and it shall be lawful, notwithstanding anything contained in the statute twenty-third and twenty-fourth Victoria, chapter one hundred, for any person so authorised in Her Majesty's dominions in India, or within the territories of any foreign state in India, to enlist and attest within the local limits of his authority any persons desirous of enlisting in Her Majesty's Indian forces. Any such magistrate or person as aforesaid shall have the same powers in that



behalf as are by this or any other Act of Parliament given to justices in the United Kingdom for all such purposes of enlistment and attestation; but no such magistrate or other person authorised to enlist and attest as above mentioned shall be a general officer or hold any regimental commission; and all such appointments, past and future, and everything done or to be done under them, shall be valid and of full effect, notwithstanding the expiration of this Act or of any other Act of Parliament; and any person so attested shall be deemed to be an attested soldier.

53. When any corps shall be relieved or disbanded at any station beyond the seas it shall be lawful for any officers thereunto authorised by the officer commanding in chief at such station to receive as transfers as many of the soldiers belonging to the corps leaving the station as shall be willing and fit for service for any corps appointed to remain; and every soldier so transferred is hereby deemed to be discharged from his former corps, and an attested certificate of transfer shall be delivered to the soldier.

54. It shall be lawful for the Commander-in-Chief, and on any foreign station for the general or other officer commanding at such station, to direct that any soldier attested for any one branch of the service shall, on the application of his commanding officer, and with his own consent, be transferred to some other branch of the service or to some other regiment or corps in the same branch of the service, either within the United Kingdom or elsewhere; and every soldier so transferred shall be deemed to be discharged from his former corps, and shall have a certificate of transfer delivered to him: Provided always, that any soldier who may have volunteered for the corps of armourer sergeants, or for the army hospital corps, or military store staff corps, or the commissariat staff corps, or the corps to be hereafter organised and called the army service corps, shall be liable, by order of the military authorities above mentioned, to be re-transferred to his former corps, or to any other corps on the station on which he is serving at the time, for misconduct, unfitness, or any other reasonable cause: Provided also, that any staff clerk or other non-commissioned officer or soldier on the staff of the army may be transferred to any corps serving at the station at the time of his removal from staff employ: Provided also, that upon the conviction by court-martial of any soldier of the crime of desertion, the officer commanding in chief Her Majesty's forces may, and if the court-martial has been held at a foreign station the officer commanding in chief Her Majesty's forces at such foreign station may, order such soldier to serve in any regiment or corps.

55. Any person who now has or may hereafter have completed at least two thirds of the first term of his enlistment may at any time thereafter, with the approbation of his commanding officer, or other competent military authority, be re-engaged for such a period as shall complete a total period of twenty-one years in Her Majesty's service; and any person who has been a soldier, and who has received his discharge, may also be so re-engaged upon making a declaration, in the form given in the schedule annexed to this Act, before any one of Her Majesty's justices of the peace in Great Britain or Ireland, or if not in Great Britain or Ireland before any person duly appointed to enlist and attest out of Great Britain and Ireland any soldiers or persons desirous of enlisting or re-engaging in Her Majesty's service: Provided always, that in reckoning service under the original enlistment or re-engagement of a soldier the boon service granted by the general order of the Governor General of India, dated twelfth of October one thousand eight hundred and fifty-nine, shall be reckoned as actual service, and allowed towards pension and discharge: Provided also, that every soldier now serving who belonged to the garrison which defended Lucknow, or to the garrison which defended the Alumbagh, before the advance of any portion of the forces under the late Lord Clyde in one thousand eight hundred and fifty-seven, shall be allowed to reckon one year's service towards the performance of his limited engagement, and also towards pension on discharge: Provided also, that every soldier who volunteered into Her Majesty's army from any embodied regiment of militia between the thirty-first of December one thousand eight hundred and fifty-five and the twenty-first of March one thousand eight hundred and sixty-one inclusive, or from the disembodied militia during the last week of the training of his regiment in the year one thousand eight hundred and fifty-eight, and who had rendered previous to volunteering six months embodied or disembodied militia service, shall be allowed to reckon towards good-conduct pay and pension, and towards the completion of his limited engagement of service in Her Majesty's army, half the embodied service which he had rendered in the militia after attaining the age of eighteen.

56. All negroes or persons of colour who, although not born in any of Her Majesty's colonies, territories, or possessions, shall have voluntarily enlisted into Her Majesty's service, shall, while serving, be deemed to be soldiers legally enlisted into Her Majesty's service, and be entitled to all the privileges of natural-born subjects; and all negroes who have been seized and condemned as prize under the Slave Trade Acts, and appointed to serve in Her Majesty's army, shall be deemed to be and shall be entitled to all

the advantages of negroes or persons of colour voluntarily enlisted to serve as soldiers in any of Her Majesty's colonial forces.

57. Any person duly bound as an apprentice in Great Britain or Ireland, or as an indentured labourer in any of Her Majesty's colonies or possessions abroad, who shall enlist as a soldier in Her Majesty's army, and shall falsely state to the magistrate before whom he shall be carried and attested that he is not an apprentice or indentured labourer as aforesaid, shall be deemed guilty of obtaining money under false pretences, if in England or in Ireland, or in the colonies or possessions aforesaid, and of falsehood, fraud, and wilful imposition, if in Scotland, and shall after the expiration of his apprenticeship, or of his indenture as a labourer, whether he shall have been so convicted and punished or not, be liable to serve as a soldier in Her Majesty's army according to the terms of the enlistment, and if on the expiration of his apprenticeship, or of his indenture as a labourer, he shall not deliver himself up to some officer authorised to receive recruits, such person may be taken as a deserter from Her Majesty's army; and no master shall be entitled to claim an apprentice or an indentured labourer as aforesaid who shall enlist as a soldier in Her Majesty's army, or shall be serving in the embodied militia, unless he shall, within one calendar month after such apprentice or indentured labourer shall have left his service, go before some justice and take the oath mentioned in the schedule to this Act annexed, and shall produce the certificate of such justice of his having taken such oath, which certificate such justice is required to give in the form in the schedule to this Act annexed, and unless such apprentice shall have been bound, if in England, for the full term of five years, not having been above the age of fourteen when so bound, and, if in Ireland or in the British Isles, for the full term of five years at the least, not having been above the age of sixteen when so bound, and, if in Scotland, for the full term at least of four years, by a regular contract or indenture of apprenticeship, duly extended, signed, and tested, and binding on both parties by the law of Scotland, prior to the period of enlistment, and unless such contract or indenture in Scotland shall, within three months after the commencement of the apprenticeship, and before the period of enlistment, have been produced to a justice of the peace of the county in Scotland wherein the parties reside, and there shall have been indorsed thereon by such justice a certificate or declaration, signed by him, specifying the date when and the person by whom such contract or indenture was so produced, which certificate or declaration such justice of the peace is hereby required to indorse and sign, and unless such apprentice

shall, when claimed by such master, be under twenty-one years of age: Provided always, that any master of an apprentice indentured for the sea service, or of any indentured labourer in Her Majesty's colonies or possessions abroad, shall be entitled to claim and recover him in the form and manner above directed, notwithstanding such apprentice or indentured labourer may have been bound for a less term than five or four years as aforesaid: Provided also, that any master who shall give up the indentures of his apprentice or of his labourer as aforesaid within one month after the enlisting of such apprentice or indentured labourer shall be entitled to receive to his own use so much of the bounty payable to such recruit as shall not have been paid to such recruit before notice given of his being an apprentice or an indentured labourer.

58. No apprentice or indentured labourer claimed by his master as aforesaid shall be taken from any corps or recruiting party, except under a warrant of a justice residing near, and within whose jurisdiction such apprentice or indentured labourer shall then happen to be, before whom he shall be carried; and such justice shall inquire into the matter upon oath, which oath he is hereby empowered to administer, and shall require the production and proof of the indenture, and that notice of the said warrant has been given to the commanding officer, and a copy thereof left with some officer or non-commissioned officer of the party, and that such person so enlisted declared that he was no apprentice or indentured labourer; and such justice, if required by such officer or non-commissioned officer, shall commit the offender to the common gaol of the county, division, or place for which such justice is acting, and shall keep the indenture to be produced when required, and shall bind over such person as he may think proper to give evidence against the offender, who shall be tried at the next or at the sessions immediately succeeding the next general or quarter sessions of such county, division, or place, unless the court shall for just cause put off the trial; and the production of the indenture, with the certificate of the justice that the same was proved, shall be sufficient evidence of the said indenture; and every such offender in Scotland may be tried by the judge ordinary in the county or stewartry in such and the like manner as any person may be tried in Scotland for any offence not incurring a capital punishment: Provided always, that any justice not required as aforesaid to commit such apprentice or indentured labourer may deliver him to his master.

59. No person who shall, for six months either before or after the passing of this Act, have received pay and been borne on the strength and

pay list of any regiment or corps, or depôt or battalion of a regiment or corps (of which the last quarterly pay list, if produced, shall be evidence), shall be entitled to claim his discharge on the ground of error or illegality in his enlistment or attestation or re-engagement, or on any other ground whatsoever, but, on the contrary, every such person shall be deemed to have been duly enlisted, attested, or re-engaged, as the case may be; and no person shall be exempted from the provisions of this Act or of the Articles of War for the time being by reason only that the number of the forces for the time being in the service of Her Majesty is either greater or less than the number herein-before mentioned.

60. No Secretary of State for the War Department, paymaster general of the army, paymaster, or any other officer whatsoever, or any of their under officers, shall receive any fees or make any deductions whatsoever out of the pay of any officer or soldier in Her Majesty's army, or from their agents, which shall grow due from and after the twenty-fifth day of April one thousand eight hundred and seventy, other than the usual deductions, or such other necessary deductions as shall from time to time be authorised or required by Her Majesty's regulations or Articles of War, or by statute twenty-six and twenty-seven Victoria, chapter sixty-five, section eight (Volunteer Act), or by Her Majesty's order signified by the Secretary of State for the War Department; and every paymaster or other officer who having received any officer's or soldier's pay shall unlawfully detain the same for the space of one month, or refuse to pay the same when it shall become due, according to the several rates and agreeably to the several regulations established by Her Majesty's orders, shall, upon proof thereof before a court-martial, be discharged from his employment, and shall forfeit one hundred pounds, and the informer, if a soldier, shall, if he demand it, be discharged from any further service.

61. And whereas by petition of right in the third year of King Charles the First it is enacted and declared, that the people of the land are not by the laws to be burdened with the sojourning of soldiers against their wills; and by a clause in an Act of the Parliament of England, made in the thirty-first year of the reign of King Charles the Second, for granting a supply to His Majesty of two hundred and six thousand four hundred and sixty-two pounds seventeen shillings and threepence, for paying and disbanding the forces, it is declared and enacted that no officer, civil or military, nor other person whosever, should thenceforth presume to place, quarter, or billet any soldier upon any subject or inhabitant of this realm, of any degree, quality, or profes-

sion whatsoever, without his consent, and that it shall be lawful for any subject or inhabitant to refuse to quarter any soldier, notwithstanding any warrant or billeting whatsoever: And whereas by an Act passed in the Parliament of Ireland in the sixth year of the reign of Queen Anne, chapter fourteen, section eight, intituled "An Act to prevent the disorders that may happen by the marching of soldiers, and providing carriages for the baggage of soldiers on their march," it was enacted, that no officer, soldier, or trooper in the army, nor the servant of any officer, nor any attendant on the train of artillery, nor any yeoman of the guard or battle-axes, nor any officer commanding the said yeomen, nor any servant of any such officer, should at any time thereafter have, receive, or be allowed any quarters in any part of Ireland, save only during such time or times as he or they should be on their march as in the same Act is before mentioned, or during such time as he or they should be and remain in some seaport town or other place in the neighbourhood of a seaport town in order to be transported, or during such time as there should be any commotion in any part of Ireland, by reason of which emergency the army, or any considerable part thereof, should be commanded to march from one part of Ireland to another: But forasmuch as there is and may be occasion for the marching and quartering of regiments, corps, troops, and companies in several parts of the United Kingdom of Great Britain and Ireland, the said several provisions of the said recited Acts shall be suspended and cease to be of any force or effect during the continuance of this Act.

62. And whereas by the eleventh section of the said Act of the sixth year of the reign of Queen Anne, chapter fourteen, it is provided and enacted, that no civil magistrate or constable should be obliged to find quarters for or give billets to more or other soldiers than those only whose true christian and surnames should be delivered to him in writing under the hand of the officer desiring quarters or billets for such soldiers at the time such quarters or billets should be desired, and that all such names should be written together and delivered in one piece of paper, signed as aforesaid, and that the christian and surnames of every soldier to be quartered or billeted, together with the name of the person on whom he or they should be billeted or quartered, should be given in writing by the constable or civil officer billeting or quartering such soldier, and be contained in the billet given by such civil officer: And whereas it has been found inconvenient and difficult to comply with all the requirements of the said enactment: It shall not be necessary, so long as this Act shall continue in force, for any officer, upon the occasion of his

requiring quarters or billets for any soldiers in Ireland, to deliver to the constable or other person whose duty it shall be to find or give the same any list of the names of the soldiers to be so quartered or billeted; and it shall not be necessary for the constable or other such person as aforesaid to set forth in any billet the name of any soldier to be billeted or quartered, but only the number of the soldiers, or the number of the soldiers and horses respectively, as the case may require, to be billeted or quartered on the person named in the billet, and to whom the same shall be addressed.

63. It shall be lawful for all constables of parishes and places, and other persons specified in this Act, in Great Britain and Ireland, and they are hereby required, to billet the officers and soldiers in Her Majesty's service, and out-pensioners when assembled as a local force by competent authority, and persons receiving pay in Her Majesty's army, and the horses belonging to Her Majesty's cavalry, and also all staff and field officers horses, and all bāt and baggage horses belonging to any of Her Majesty's other forces, when on actual service, not exceeding for each officer the number for which forage is or shall be allowed by Her Majesty's regulations, in victualling houses and other houses specified in this Act (taking care in Ireland not to billet less than two men in one house, except only in case of billeting cavalry as specially provided); and they shall be received by the occupiers of the houses in which they are so billeted, and be furnished by such victuallers with proper accommodation in such houses, or if any victualler shall not have sufficient accommodation in the house upon which a soldier is billeted, then in some good and sufficient quarters to be provided by such victualler in the immediate neighbourhood, and in Great Britain shall also be furnished with diet and small beer, and in Great Britain and Ireland with stables, oats, hay, and straw for such horses as aforesaid, paying and allowing for the same the several rates herein-after provided; and at no time when troops are on a march shall any of them, whether infantry or cavalry, be billeted above one mile from the place mentioned in the route, care being always taken that billets be made out for the less distant houses, in which suitable accommodation can be found, before making out billets for the more distant; and in all places where cavalry shall be billeted in pursuance of this Act, each man and his horse shall be billeted in one and the same house, except in case of necessity; and, except in case of necessity, one man at least shall be billeted where there shall be one or two horses, and two men at least where there shall be four horses, and so in proportion for a greater number; and in no case shall a man and his horse be billeted at a greater

distance from each other than one hundred yards; and the constables are hereby required to billet all soldiers and their horses on their march, in the manner required by this Act, upon the occupiers of all houses within one mile of the place mentioned in the route, and whether they be in the same or in a different county, in like manner in every respect as if such houses were all locally situate within such place; provided that nothing herein contained shall be construed to extend to authorise any constable to billet soldiers out of the county to which such constable belongs when the constable of the adjoining county shall be present and shall undertake to billet the due proportion of men in such adjoining county; and no more billets shall at any time be ordered than there are effective soldiers and horses present to be billeted; all which billets, when made out by such constables, shall be delivered into the hands of the commanding officer present; and if any person shall find himself aggrieved by having an undue proportion of soldiers billeted in his house, and shall prefer his complaint, if against a constable or other person not being a justice, to one or more justices, and if against a justice then to two or more justices within whose jurisdiction such soldiers are billeted, such justices respectively shall have power to order such of the soldiers to be removed, and to be billeted upon other persons, as they shall see cause; and when any of Her Majesty's cavalry or any horses as aforesaid shall be billeted upon the occupiers of houses in which officers or soldiers may be quartered by virtue of this Act who shall have no stables, then and in such case, upon the written requisition of the commanding officer of the regiment, corps, troop, or detachment, the constable is hereby required to billet the men and their horses, or horses only, upon some other person or persons who have stables, and who are by this Act liable to have officers and soldiers billeted upon them; and upon complaint being made by the person or persons to whose house or stables the said men or horses shall have been so removed to two or more justices within whose jurisdiction such men or horses shall be so billeted, it shall be lawful for such justices to order a proper allowance to be paid by the person relieved to the persons receiving such men and horses, or to be applied in furnishing the requisite accommodation; and commanding officers may exchange any man or horse billeted in any place with another man or horse billeted in the same place for the benefit of the service, provided the number of men and horses do not exceed the number at that time billeted on such houses respectively; and the constables are hereby required to billet such men and horses so exchanged accordingly; and it shall be lawful for any justice, at the request of any officer or non-commissioned officer commanding any soldiers requiring billets,

to extend any routes or to enlarge the districts within which billets shall be required, in such manner as shall appear to be most convenient to the troops; provided that to prevent or punish all abuses in billeting soldiers it shall be lawful for any justice within his jurisdiction, by warrant or order under his hand, to require any constable to give him an account in writing of the number of officers and soldiers who shall be quartered by such constables, together with the names of the persons upon whom such officers and soldiers are billeted, stating the street or place where such persons dwell, and the sign, if any, belonging to the houses: Provided always, that no officer shall be compelled or compellable to pay anything for his lodging where he shall be duly billeted.

64. The officers and soldiers of Her Majesty's Foot Guards shall be billeted within the city and liberties of Westminster and places adjacent, lying in the county of Middlesex (except the city of London) and in the county of Surrey, and in the borough of Southwark, in the same manner and under the same regulations as in other parts of England, in all cases for which particular provision is not made by this Act; and the high constables shall, on receipt of the order for billeting soldiers, deliver precepts to the several constables within their respective divisions, in pursuance of which the said constables shall billet such officers and soldiers equally and proportionably on the houses subjected thereto by this Act; and the said constables shall, at every general sessions of the peace to be holden for the said city and liberties, counties and borough respectively, make and deliver to the justices then in open session assembled, upon oath, which oath the said justices are hereby required to administer, lists, signed by them respectively, of the houses subject by this Act to receive officers and soldiers, together with the names and rank of all officers and soldiers billeted on each respectively, which lists shall remain with the respective clerks of the peace for the inspection of all persons, without fee or reward; and such clerk shall forthwith from time to time deliver to any persons who shall require the same true copies of any such lists, upon being paid twopence per sheet for the same, each sheet to contain at the least one hundred and fifty words.

65. No justice having or executing any military office or commission in any part of the United Kingdom shall, directly or indirectly, be concerned in the billeting or appointing quarters for any soldier in the regiment, corps, troop, or company under the immediate command of such justice, and all warrants, acts, and things made,

done, and appointed by such justice for or concerning the same shall be void.

66. The innholder or other person on whom any soldier is billeted in Great Britain shall, if required by such soldier, furnish him for every day of the march, and for a period not exceeding two days when halted at the intermediate place upon the march, and for the day of the arrival at the place of final destination, with one hot meal in each day, the meal to consist of such quantities of diet and small beer as may be fixed by Her Majesty's regulations, not exceeding one pound and a quarter of meat previous to being dressed, one pound of bread, one pound of potatoes or other vegetables, and two pints of small beer, and vinegar, salt, and pepper, and for such meal the innholder or other person furnishing the same shall be paid the sum of tenpence, and twopence halfpenny for a bed; and all innholders and other persons on whom soldiers may be billeted in Great Britain or Ireland, except when on the march in Great Britain and entitled to be furnished with the hot meal as aforesaid, shall furnish such soldiers with a bed and with candles, vinegar, and salt, and shall allow them the use of fire, and the necessary utensils for dressing and eating their meat, and shall be paid in consideration thereof the sum of fourpence per diem for each soldier; and the sum to be paid to the innholder or other person on whom any of the horses belonging to Her Majesty's forces shall be billeted in Great Britain or Ireland for ten pounds of oats, twelve pounds of hay, and eight pounds of straw, shall be one shilling and ninepence per diem for each horse; and every officer or non-commissioned officer commanding a regiment, detachment, or party shall, every four days, or before they shall quit their quarters if they shall not remain so long as four days, settle and discharge the just demands of all victuallers or other persons upon whom such officers, soldiers, or horses are billeted, out of the pay and subsistence of such officers and soldiers, before any part of the said pay or subsistence be distributed to them respectively; and if any such officer or non-commissioned officer shall not pay the same as aforesaid, then, upon complaint, and oath made thereof by any two witnesses before two justices of the peace for the county, riding, division, liberty, city, borough, or place where such quarters were situated, sitting in quarter or petty sessions, the Secretary of State for the War Department is hereby required (upon certificate of the justices before whom such oath was made of the sum due upon such accounts, and the persons to whom the same is owing, to give orders to the agent of the regiment or corps to pay the sums due to such victuallers or other persons as aforesaid, and to charge the same against such officers; and in case any soldier be suddenly ordered to

march, and the respective commanding officers or non-commissioned officers are not enabled to make payment of the sums due for the lodging or victualling of the men and stabling or forage for the horses, every such officer or non-commissioned officer shall, before his departure, make up the account with every person upon whom such soldier may have been billeted, and sign a certificate thereof; which account and certificate shall be transmitted by such officer or non-commissioned officer to the agent of the regiment or corps, who is hereby required to make immediate payment thereof, and to charge the same to the account of such officer or non-commissioned officer.

67. All powers and provisions relating to soldiers shall be construed to extend to non-commissioned officers, unless when otherwise provided; and all powers and provisions relating to justices shall be construed to extend to all magistrates authorised to act as such in their respective jurisdictions and to chief magistrates of exclusive local jurisdictions; and all the powers given to and regulations made for the conduct of constables in relation to the billeting of officers and soldiers, and all penalties and forfeitures for any neglect thereof, shall extend to all tithingmen, headboroughs, and such like officers, and to all inspectors or other officers of police, and to high constables and other chief officers and magistrates of cities, towns, villages, hamlets, parishes, and places in England and Ireland, and to all justices of the peace, magistrates of burghs, commissioners of police, and other chief officers and magistrates of cities, towns, villages, parishes, and places in Scotland, who shall act in the execution of this Act in relation to billeting; and all powers and provisions for billeting officers and soldiers in victualling houses shall extend and apply to all inns, hotels, livery stables, alehouses, and to the houses of sellers of wine by retail, whether British or foreign, to be drunk in their own houses, or places thereunto belonging, and to all houses of persons selling brandy, spirits, strong waters, cider, or metheglin, by retail, in Great Britain and Ireland; and in Ireland, when there shall not be found sufficient room in such houses, then to billeting soldiers in such manner as has been heretofore customary: Provided that no officer or soldier shall be billeted in Great Britain in any private houses, or in any canteen held or occupied under the authority of the War Department, or upon persons who keep taverns only, being vintners of the City of London admitted to their freedom of the said company in right of patrimony or apprenticeship, notwithstanding such persons who keep such taverns only have taken out victualling licences, nor in the house of any distiller kept for distilling brandy and strong waters, nor in the house of any shopkeeper whose

principal dealing shall be more in other goods and merchandise than in brandy and strong waters, so as such distillers and shopkeepers do not permit tipping in such houses, nor in the house of residence in any part of the United Kingdom of any foreign consul duly accredited as such.

68. For the regular provision of carriages for Her Majesty's forces, and their baggage, in their marches in Great Britain and Ireland, all justices of the peace within their several jurisdictions, being duly required thereunto by an order from Her Majesty, or the general of her forces, or other person duly authorised in that behalf, shall, on production to them of such order, or a copy thereof, certified by the commanding officer, by some officer or non-commissioned officer of the regiment or corps so ordered to march, issue a warrant to any constable having authority to act in any place from, through, near, or to which the troop shall be ordered to march, (for each of which warrants the fee of one shilling only shall be paid,) requiring him to provide the carriages, horses, and oxen, and drivers therein mentioned, and allowing sufficient time to do the same, specifying the places from and to which the said carriages shall travel, and the distance between the places, for which distance only so specified payment shall be demanded, and which distance shall not, except in cases of pressing emergency, exceed a day's march prescribed in the order of route, and shall in no cases exceed twenty-five miles; and the constables receiving such warrants shall order such persons as they shall think proper, having carriages, to furnish the requisite supply, who are hereby required to furnish the same accordingly; and when sufficient carriages cannot be procured within the proper jurisdiction, any justice of the next adjoining jurisdiction shall, by a like course of proceeding, supply the deficiency; and in order that the burden of providing carriages may fall equally, and to prevent inconvenience arising from there being no justice near the place where troops may be quartered on the march, any justice residing nearest to such place may cause a list to be made out once in every year of all persons liable to furnish such carriages, and of the number and description of their said carriages, (which list shall at all seasonable hours be open to the inspection of the said persons,) and may by warrant under his hand authorise the constable within his jurisdiction to give orders to provide carriages, without any special warrant for that purpose, which orders shall be valid in all respects; and all orders for such carriages shall be made from such lists in regular rotation, as far as the same can be done.

69. In every case in which the whole distance for which any carriage shall be impressed shall be under one mile the rate of a full mile shall be

paid; and the rates to be paid for carriages impressed shall be, in Great Britain, for every mile which a waggon with four or more horses, or a wain with six oxen or four oxen and two horses, shall travel, one shilling; and for every mile any waggon with narrow wheels, or any cart with four horses, carrying not less than fifteen hundredweight, shall travel, ninepence; and for every mile any other cart or carriage with less than four horses, and not carrying fifteen hundredweight, shall travel, sixpence; and in Ireland, for every hundredweight loaded on any wheel carriage, one halfpenny per mile; and in Great Britain such further rates may be added, not exceeding a total addition per mile of fourpence, threepence, or twopence, to the respective rates of one shilling, ninepence, or sixpence, as may seem reasonable to the justices assembled at general sessions for their respective districts, or to the recorder at the sessions of the peace of any municipal city, borough, or town; and the order of such justices or recorder shall specify the average price of hay and oats at the nearest market town at the time of fixing such additional rates, the period for which the order shall be enforced not exceeding ten days beyond the next general sessions; and no such order shall be valid unless a copy thereof, signed by the presiding magistrate and one other justice, or by the recorder, shall be transmitted to the Secretary of State for the War Department within three days after the making thereof, and also in Great Britain when the day's march shall exceed fifteen miles the justice granting his warrant may fix a further reasonable compensation, not exceeding the usual rate of hire fixed by this Act; and when any additional rates or compensation shall be granted, the justice shall insert in his own hand in the warrant the amount thereof, and the date of the order of sessions, if fixed by sessions, and the warrant shall be given to the officer commanding as his voucher; and the officer or non-commissioned officer demanding carriages by virtue of the warrant of a justice shall, in Great Britain, pay the proper sums into the hands of the constables providing carriages, who shall give receipts for the same on unstamped paper; and in Ireland the officers or non-commissioned officers as aforesaid shall pay the proper sums to the owners or drivers of the carriages, and one third part of such payment shall be made before the carriage be loaded, and all the said payments in Ireland shall be made, if required, in the presence of a justice or constable; and no carriage shall be liable to carry more than thirty hundredweight in Great Britain, and in Ireland no car shall be liable to carry more than six hundredweight, and no dray more than twelve hundredweight; but the owner of such carriages in Ireland consenting to carry a greater weight shall be paid at the same rate for every hundredweight of the said excess; and the owners of

such carriages in Ireland shall not be compelled to proceed, though with any less weight, under the sum of threepence a mile for each car and sixpence a mile for each dray; and the loading of such carriages in Ireland shall be first weighed, if required, at the expense of the owner of the carriage, if the same can be done in a reasonable time, without hindrance to Her Majesty's service; provided that a cart with one or more horses for which the furnisher shall receive ninepence a mile shall be required to carry fifteen hundredweight at the least; and no penalties or forfeitures in any Act relating to highways or turnpike roads in the United Kingdom shall apply to the number of horses and oxen, or weight of loading of the aforesaid carriages, which shall not on that account be stopped or detained; and whenever it shall be necessary to impress carriages for the march of soldiers from Dublin, at least twenty-four hours notice of such march, and in case of emergency as long notice as the case will admit, shall be given to the Lord Mayor of Dublin, who shall summon a proportional number of cars and drays, at his discretion, out of the licensed cars and drays and other cars and drays within the county of the said city, and they shall by turns be employed on this duty at the prices and under the regulations herein-before mentioned; and no country cars, drays, or other carriages coming to markets in Ireland shall be detained or employed against the will of the owners in carrying the baggage of the army on any pretence whatsoever.

70. It shall be lawful for Her Majesty, or for the Lord Lieutenant or chief governor of Ireland, by her or their order, distinctly stating that a case of emergency doth exist, signified by the Secretary of State for the War Department, or, if in Ireland, by the Chief Secretary or Under Secretary, or the first clerk in the Military Department, to authorize any general or field officer commanding Her Majesty's forces in any district or place, or the chief acting agent for the supply of stores and provisions, by writing under his hand reciting such order of Her Majesty or Lord Lieutenant or chief governor aforesaid, to require all justices within their several jurisdictions in Great Britain and Ireland to issue their warrants for the provision, not only of waggons, wains, carts, and cars kept by or belonging to any person and for any use whatsoever, but also of saddle horses, coaches, post-chaises, chaises, and other four-wheeled carriages kept for hire, and of all horses kept to draw carriages licensed to carry passengers, and also of boats, barges, and other vessels used for the transport of any commodities whatsoever upon any canal or navigable river, as shall be mentioned in the said warrants, therein specifying the place and distance to which such carriages or vessels shall go; and on the production of such requi-

sition, or a copy thereof certified by the commanding officer, to such justice, by any officer of the corps ordered to be conveyed, or by any officer of the War Department, such justice shall take all the same proceedings in regard to such additional supply so required on such emergency as he is by this Act required to take for the ordinary provision of carriages; and all provisions whatsoever of this Act as regards the procuring of the ordinary supply of carriages, and the duties of officers and non-commissioned officers, justices, constables, and owners of carriages in that behalf, shall be to all intents and purposes applicable for the providing and payment, according to the rates of posting or of hire usually paid for such other description of carriages or vessels so required on emergency, according to the length of the journey or voyage in each case, but making no allowance for post horse duty, or turnpike, canal, river, or lock tolls, which duty or tolls are hereby declared not to be demandable for such carriages and vessels while employed in such service or returning therefrom; and it shall be lawful to convey thereon, not only the baggage, provisions, and military stores of such regiment, corps, or detachment, but also the officers, soldiers, servants, women, children, and other persons of and belonging to the same.

71. It shall be lawful for the justices of the peace assembled at their quarter sessions to direct the treasurer to pay, without fee, out of the public stock of the county or riding, or if such public stock be insufficient then out of moneys which the said justices shall have power to raise for that purpose, in like manner as for county gaols and bridges, such reasonable sums as shall have been expended by the constables within their respective jurisdictions for carriages and vessels, over and above what was or ought to have been paid by the officer requiring the same, regard being had to the season of the year and the condition of the ways by which such carriages and vessels are to pass; and in Scotland such justices shall direct such payments to be made out of the rogue money and assessments directed and authorized to be assessed and levied by an Act of the twentieth and twenty-first years of the reign of Her present Majesty, chapter seventy-two.

72. It shall be lawful for the Lord Lieutenant or other chief governor for the time being of Ireland to depute, by warrant under his hand and seal, some proper person to sign routes in cases of emergency, for the marching of any of Her Majesty's forces in Ireland, in the name of such Lord Lieutenant or chief governor.

73. All Her Majesty's officers and soldiers, on duty or on their march, and their horses and

baggage, and all recruits marching by route, and all prisoners under military escort, and all enrolled pensioners in uniform when called out for training or in aid of the civil power, and all carriages and horses belonging to Her Majesty or employed in her service under the provisions of this Act, or in any of Her Majesty's colonies, when conveying any such persons as aforesaid, or their baggage, or returning from conveying the same, shall be exempted from payment of any duties and tolls on embarking or disembarking from or upon any pier, wharf, quay, or landing place, or in passing along or over any turnpike or other roads or bridges, otherwise demandable by virtue of any Act already passed or hereafter to be passed, or by virtue of any Act or ordinance, order or direction of any colonial legislature or other authority in any of Her Majesty's colonies; provided that nothing herein contained shall exempt any boats, barges, or other vessels employed in conveying the said persons, horses, baggage, or stores along any canal from payment of tolls in like manner as other boats, barges, and vessels are liable thereto, except when employed in cases of emergency as herein-before enacted.

74. When any soldiers on service have occasion in their march by route to pass regular ferries in Scotland, the officer commanding may at his option pass over with his soldiers as passengers, and shall pay for himself and each soldier one half only of the ordinary rate payable by single persons, or may hire the ferry boat for himself and his party, debarring others for that time, and shall in all such cases pay only half the ordinary rate for such boat.

75. Every soldier entitled to his discharge shall, if then serving abroad, be sent, if he shall so require, to Great Britain or Ireland free of expense, and shall be entitled to receive marching money from the place of his being landed (or, if discharged at home, shall receive marching money from the place of his discharge,) to the parish or place in which he shall have been originally enlisted, or at which he shall at the time of his discharge decide to take up his residence, such place not being at a greater distance from the place of his discharge than the place of his original enlistment.

76. Nothing in this Act contained shall be construed to extend to exempt any officer or soldier from being proceeded against by the ordinary course of law, when accused of felony, or of misdemeanor, or of any crime or offence other than the misdemeanors and offences herein-before mentioned; and if any commanding officer shall neglect or refuse, on application being made to him for that purpose, to deliver over to the civil magistrate any officer or soldier under his



command, or shall wilfully obstruct, neglect, or refuse to assist the officers of justice in apprehending any officer or soldier under his command, so accused as aforesaid, such commanding officer shall, upon conviction thereof in any of Her Majesty's superior courts at Westminster, Dublin, or Edinburgh, or in any court of record in India, be deemed to be thereupon cashiered, and shall be thenceforth utterly disabled to have or hold any civil or military office or employment in the United Kingdom of Great Britain and Ireland or in Her Majesty's service; and a certificate of such conviction, containing the substance and effect of the indictment only, omitting the formal part, with the copy of the entry of the judgment of the court thereon, shall be transmitted to the judge advocate general in London.

77. For enforcing a prompt observance of the rules and orders for the due appropriation of the public funds applicable to army services, and in order that a true and regular account may be kept and rendered by the agents for the several corps, the said agents are hereby required to observe such orders as shall from time to time be given by Her Majesty under her sign manual, or by the Secretary of State for the War Department, or by Her Majesty's Lord Lieutenant or chief governor of Ireland, or by the Lord Treasurer or the Commissioners of Her Majesty's Treasury; and if any person, being or having been an agent, shall refuse or neglect to comply with such orders in relation to his duty as agent, or shall unlawfully withhold or detain the pay of any officer or soldier for a longer period than the space of one month after the receipt thereof, he shall for the first offence forfeit the sum of one hundred pounds, and, if still an agent, for the second offence be discharged from his employment as an army agent, and be utterly disabled to have or hold such employment thereafter, or, if he have ceased to be an army agent, shall for the second and every succeeding offence forfeit the sum of two hundred pounds.

78. Every person, not being an authorized army agent, who shall negotiate or act as agent for or in relation to the purchase, sale, or exchange of any commission in Her Majesty's army, shall forfeit for every such offence the sum of one hundred pounds; and every person, whether authorized as an army agent or not, who shall receive any money or reward in respect of any such purchase, sale, or exchange, or who shall negotiate or receive for any purpose whatsoever any money or consideration where no price is allowed by Her Majesty's regulations, or any money or consideration exceeding the amount so allowed, shall forfeit one hundred pounds, and treble the value of the consideration

where the commission is not allowed to be sold, or treble the excess of such consideration beyond the regular price.

79. Every person, not having any military commission, who shall give or procure to be given any untrue certificate, whereby to excuse any soldier for his absence from any muster or any other service which he ought to attend or perform, or who shall directly or indirectly cause to be taken any money or gratuity for mustering any soldiers, or for signing any muster rolls or duplicates thereof, shall forfeit for every such offence the sum of fifty pounds; and any person who shall falsely be mustered, or offer himself to be mustered, or lend or furnish any horse to be falsely mustered, shall, upon conviction before some justice of the peace residing near the place where such muster shall be made, forfeit for every such offence the sum of twenty pounds; and the informer, if he belongs to Her Majesty's service, shall, if he demand it, be forthwith discharged.

80. Every person (except such person or persons as shall be authorized by beating order under the hand of the Secretary of State for the War Department) who shall cause to be advertised, posted, or dispersed bills for the purpose of procuring recruits or substitutes for the line, embodied militia, or Her Majesty's Indian forces, or shall open or keep any house, place of rendezvous, or office, or receive any person therein under such bill or advertisement, as connected with the recruiting service, or shall directly or indirectly interfere therewith, without permission in writing from the adjutant general, or from the Secretary of State in Council of India, (as the case may be,) shall forfeit for every such offence a sum not exceeding twenty pounds.

81. Any person who shall in any part of Her Majesty's dominions, or by any means whatsoever, directly or indirectly, procure any soldier to desert, or attempt to procure or persuade any soldier to desert, and any person who, knowing that any soldier is about to desert, shall aid or assist him in deserting, or, knowing any soldier to be a deserter, shall conceal such deserter, or aid or assist such deserter in concealing himself, or aid or assist in his rescue, shall be deemed guilty of a misdemeanor, and shall, on conviction thereof before any two justices acting for the county, district, city, burgh, or place where any such offender shall at any time happen to be, be liable to be committed to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for such term not exceeding six calendar months as the convicting justices shall think fit.

82. Any officer or soldier who shall, in pursuit of any deserter, forcibly enter into or break open any dwelling house or outhouse, or shall give any order under which any dwelling house or outhouse shall be forcibly entered into or broken open, without a warrant from one or more justices of the peace, shall, on conviction thereof before two justices of the peace, forfeit a sum not exceeding twenty pounds.

83. If any person shall convey or cause to be conveyed into any military prison appointed to be a public prison under this Act any arms, tools, or instruments, or any mask or other disguise, in order to facilitate the escape of any prisoner, or shall by any means whatever aid and assist any prisoner to escape or in attempting to escape from such prison, whether an escape be actually made or not, such person shall be deemed guilty of felony, and upon being convicted thereof shall be kept to penal servitude for any term not less than five years and not exceeding seven years, or be imprisoned, with or without hard labour, for any term not exceeding two years; and if any person shall bring or attempt to bring into such prison, in contravention of the existing rules thereof, any spirituous or fermented liquor, he shall for every such offence be liable to a penalty not exceeding twenty pounds and not less than ten pounds, or to be imprisoned, with or without hard labour, for any time not exceeding three calendar months; and if any person shall bring into such prison, to or for any prisoner, without the knowledge of the governor, any money, clothing, provisions, tobacco, letters, papers, or any other articles not allowed by the rules of the prison to be in the possession of a prisoner, or shall throw into the said prison any such articles, or shall by desire of any prisoner, without the sanction of the governor, carry out of the prison any of the articles aforesaid, he shall for every such offence be liable to a penalty not exceeding five pounds, or to be imprisoned, either with or without hard labour, for any time not exceeding one calendar month; and if any person shall assault or violently resist any officer of such prison in the execution of his duty, or shall aid or excite any person so to assault or resist any such officer, he shall for every such offence be liable to a penalty not exceeding five pounds, or to be imprisoned, with or without hard labour, for any time not exceeding one calendar month, or, if the offender be a soldier already under sentence of imprisonment, he shall be liable for every such offence, upon conviction thereof by a board of not less than three of the visitors of the prison, to be imprisoned, either with or without hard labour, for any time not exceeding six calendar months, in addition to his original sentence, or to be subjected to corporal punishment not exceeding fifty lashes, or upon

conviction thereof by a single visitor to be imprisoned, with or without hard labour, for any time not exceeding seventy-two hours, in addition to his original sentence, or to be subjected to corporal punishment not exceeding twenty-five lashes; or if such soldier shall, within forty-eight hours of the expiration of his original or of any additional sentence, be guilty of any offence against the rules of the prison, he may for every such offence, on conviction thereof by a board or by a single visitor, be ordered to be kept in prison for a period not exceeding seventy-two hours either in a dark cell or in a light cell, and with or without hard labour, on a bread and water diet, or otherwise; and all the provisions of any Act or Acts of Parliament for the regulation or better ordering of gaols, houses of correction, or prisons in Great Britain shall be deemed to apply to all military prisons so far as any such provision relates to such offences; and it shall be lawful for the governor, provost marshal, officer, or servant of any military prison to use and exercise all the powers and authorities given by any such Act to the gaoler, keeper, or turnkey of any prison, or to his or their assistants, to apprehend or to cause offenders to be apprehended, in order to their being taken before a justice or justices of the peace; and all the powers and authorities given by any such Act to any justice or justices of the peace to convict offenders in any of the above cases, together with the forms of convictions contained in any such Act, shall be applicable to the like offences when committed in respect of military prisons; and all the provisions contained in any such Act relating to suits and actions prosecuted against any person for anything done in pursuance of such Act shall be deemed to apply to all suits and actions prosecuted against any person acting in pursuance of such Act in respect of military prisons.

84. Any governor, provost marshal, gaoler, or keeper of any public prison, gaol, house of correction, lock-up house, or other place of confinement, who shall refuse to receive and to confine, or to discharge or deliver over, any military offender in the manner herein-before prescribed, shall forfeit for every such offence the sum of one hundred pounds.

85. Any person who shall knowingly detain, buy, exchange, or receive from any soldier or deserter or any other person acting for or on his behalf, on any pretence whatsoever, or who shall solicit or entice any soldier, or shall be employed by any soldier, knowing him to be such, to sell any arms, ammunition, medals for good conduct or for distinguishment or other service, clothes, or military furniture, or any provisions, or any sheets or other articles used in barracks provided

under barrack regulations, or regimental necessities, or any article of forage provided for any horses belonging to Her Majesty's service, or who shall have in his or her possession or keeping any such arms, ammunition, medals, clothes, furniture, provisions, spirits, articles, necessities, or forage, and shall not give a satisfactory account how he or she came by the same, or shall change the colour of any clothes as aforesaid, shall forfeit for every such offence any sum not exceeding twenty pounds, together with treble the value of all or any of the several articles of which such offender shall so become or be possessed; and if any person having been so convicted shall afterwards be guilty of any such offence, he shall for every such offence forfeit any sum not exceeding twenty pounds but not less than five pounds, and the treble value of all or any of the several articles of which such offender shall have so become possessed, and shall in addition to such forfeiture be committed to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for such term, not exceeding six calendar months, as the convicting justice or justices shall think fit; and upon any information against any person for a second or any subsequent offence, a copy of the former conviction, certified by the proper officer having the care or custody of such conviction, or any copy of the same proved to be a true copy, shall be sufficient evidence to prove such former conviction; and if any credible person shall prove on oath before a justice of the peace, or person exercising like authority according to the laws of the part of Her Majesty's dominions in which the offence shall be committed, a reasonable cause to suspect that any person has in his or her possession, or on his or her premises, any property of the description herein-before described, on or with respect to which any such offence shall have been committed, such justice may grant a warrant to search for such property as in the case of stolen goods; and if upon such search any such property shall be found, the same shall and may be seized by the officer charged with the execution of such warrant, who shall bring the offender in whose possession the same shall be found before the same or any other justice of the peace, to be dealt with according to law: Provided always, that it shall be lawful for the legislature of any of Her Majesty's foreign dominions, on the recommendation of the officer or officers for the time being administering the government thereof, but not otherwise, to make provision by law for reducing such pecuniary penalty, if not exceeding twenty pounds, to such amount as may to such legislature appear to be better adapted to the ability and pecuniary means of Her Majesty's subjects and others inhabiting the same, which reduced penalty shall be sued for and recovered in such and the same manner

as the full penalty hereby imposed: Provided also, that it shall be competent to Her Majesty, or to the person or persons administering the government of any such foreign dominions as aforesaid, to exercise, in respect of the laws so to be passed as aforesaid, all such powers and authorities as are by law vested in Her Majesty or in any such officer or officers as aforesaid in respect of any other law made or enacted by any such legislature.

86. If any constable or other person who by virtue of this Act shall be employed in billeting any officers or soldiers in any part of the United Kingdom shall presume to billet any such officer or soldier in any house not within the meaning of this Act, without the consent of the owner or occupier thereof; or shall neglect or refuse to billet any officer or soldier on duty, when thereunto required, in such manner as is by this Act directed, provided sufficient notice be given before the arrival of such troops; or shall receive, demand, or agree for any money or reward whatsoever, in order to excuse any person from receiving such officer or soldier; or shall quarter any of the wives, children, men or maid servants of any officers or soldiers, in any such houses, against the consent of the occupiers; or shall neglect or refuse to execute such warrants of the justices as shall be directed to him for providing carriages, horses, or vessels, or shall demand more than the legal rates for the same; or if any person ordered by any constable in manner herein-before directed to provide carriages, horses, or vessels shall refuse or neglect to provide the same according to the orders of such constable, or shall do any act or thing by which the execution of any warrants for providing carriages, horses, or vessels shall be hindered; or if any constable shall neglect to deliver in to the justices at quarter sessions lists of officers and soldiers of the foot guards quartered according to the provisions of this Act, or shall wilfully cause to be delivered defective lists of the same; or if any person liable by this Act to have any officer or soldier quartered upon him shall refuse to receive and to afford proper accommodation or diet in the house in which such officer or soldier is quartered, and to furnish the several things directed to be furnished to officers and soldiers, or shall neglect or refuse to furnish good and sufficient stables, together with good and sufficient oats, hay, and straw, in Great Britain and Ireland, for each horse, in such quantities and at such rates as herein-before provided; or if any innkeeper or victualler not having good and sufficient stables shall refuse to pay over to the person or persons who may provide stabling such allowance by way of compensation as shall be directed by any justice of the peace, or shall pay any sum or sums of money to any soldier on the

march in lieu of furnishing in kind the diet and small beer to which such soldier is entitled; or if any toll collector shall demand and receive toll from any of Her Majesty's officers or soldiers, on duty or on their march, for themselves or for their horses, or from any recruits marching by route, or from any prisoners under military escort, or from any enrolled pensioners in uniform when called out for training or in aid of the civil power, or for any carriages or horses belonging to Her Majesty, or employed in her service under the provisions of this Act, or in any of Her Majesty's colonies, when conveying persons or baggage or returning therefrom, every such constable, victualler, toll-keeper, or other person respectively shall forfeit for every such offence, neglect, or refusal any sum not exceeding five pounds nor less than forty shillings; and if any person shall personate or represent himself to be a soldier or a recruit, with the view of fraudulently obtaining a billet, or money in lieu thereof, he shall for every such offence forfeit any sum not exceeding five pounds nor less than twenty shillings.

87. If any military officer shall take upon himself to quarter soldiers otherwise than is limited and allowed by this Act, or shall use or offer any menace or compulsion to or upon any mayor, constable, or other civil officer, tending to deter and discourage any of them from performing any part of their duty under this Act, or tending to induce any of them to do anything contrary to their said duty, such officer shall for every such offence (being thereof convicted before any two or more justices of the county by the oath of two credible witnesses) be deemed and taken to be thereupon cashiered, and shall be utterly disabled to hold any military employment in Her Majesty's service; provided that a certificate of such conviction shall be transmitted by one of the said justices to the Judge Advocate in London, who is hereby required to certify the same to the Commander-in-Chief and Secretary of State for the War Department, and that the said conviction be affirmed at some quarter sessions of the peace of the said county held next after the expiration of three months after such certificate of the justice shall have been transmitted as aforesaid; and if any military officer shall take, or knowingly suffer to be taken, from any person, any money or reward for excusing the quartering of officers or soldiers, or shall billet any of the wives, children, men or maid servants of any officer or soldier, in any house, against the consent of the occupier, he shall, upon being convicted thereof before a general court-martial, be cashiered; and if any officer shall constrain any carriage to travel beyond the distance specified in the justice's warrant, or shall not discharge the same in due time for their return home on

the same day, if it be practicable, except in the case of emergency for which the justice shall have given licence, or shall compel the driver of any carriage to take up any soldier or servant (except such as are sick) or any woman to ride therein, except in the cases of emergency as aforesaid, or shall force any constable, by threatening words, to provide saddle horses for himself or servants, or shall force horses from their owners, or in Ireland shall force the owner to take any loading until the same shall be first duly weighed, if the same can be done within reasonable time, or shall, contrary to the will of the owner or his servant, permit any person whatsoever to put any greater load upon any carriage than is directed by this Act, such officer shall forfeit for every offence any sum not exceeding five pounds nor less than forty shillings.

88. For the better preservation of game and fish in or near places where any officers shall at any time be quartered, be it enacted, that every officer who shall, without leave in writing from the person or persons entitled to grant such leave, take, kill, or destroy any game or fish in the United Kingdom of Great Britain and Ireland, shall for every such offence forfeit the sum of five pounds.

89. Any action which shall be brought against any person for anything to be done in pursuance of this Act shall be brought within six calendar months after the doing thereof, and it shall be lawful for every such person to plead thereunto the general issue Not Guilty, and to give all special matter in evidence to the jury; and if the verdict shall be for the defendant in any such action, or the plaintiff therein become nonsuited, or suffer any discontinuance thereof, or if in Scotland such court shall see fit to assolvie the defendant or dismiss the complaint, the court in which the said matter shall be tried shall allow unto the defendant treble costs, for which the said defendant shall have the like remedy as in other cases where costs are by law given to defendants; and every action against any person for anything done in pursuance of this Act, or against any member or minister of a court-martial in respect of any sentence of such court, or of anything done by virtue or in pursuance of such sentence, shall be brought in some one of the courts of record at Westminster, or in Dublin, or in India, or in the Court of Session in Scotland, and in no other court whatsoever.

90. All offences for which any penalties and forfeitures are by this Act imposed not exceeding twenty pounds, over and above any forfeiture of value or treble value, shall and may be determined, and such penalties and forfeitures and forfeiture

of value or treble value recovered, in every part of the United Kingdom, by and before one or more justice or justices of the peace, under the provisions of an Act passed in the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, intituled "An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions, within England and Wales, with respect to summary convictions and orders:" Provided always, that in all cases in which there shall not be sufficient goods whereon any penalty or forfeiture can be levied, the offender may be committed and imprisoned for any time not exceeding six calendar months; which said recited Act shall be used and applied, in Scotland and in Ireland, for the recovery of all such penalties and forfeitures, as fully to all intents as if the said recited Act had extended to Scotland and Ireland, anything in the said recited Act, or in an Act passed in the fourteenth and fifteenth years of the reign of Her Majesty Queen Victoria, intituled "An Act to consolidate and amend the Acts regulating the proceedings at Petty Sessions, and the duties of Justices of the Peace out of Quarter Sessions, in Ireland," to the contrary notwithstanding; and all such offences committed in the British Isles or in any of Her Majesty's dominions beyond the seas may be determined, and the penalties and forfeitures and forfeiture of value or treble value recovered, before any justices of the peace or persons exercising like authority according to the laws of the part of Her Majesty's dominions in which the offence shall be committed; and all penalties and forfeitures by this Act imposed exceeding twenty pounds shall be recovered by action in some of the courts of record at Westminster, or in Dublin, or in India, or in the Court of Session in Scotland, and in no other court in the United Kingdom, and may be recovered in the British Isles, or in any other parts of Her Majesty's dominions, in any of the royal or superior courts of such isles or other parts of Her Majesty's dominions.

91. One moiety of every penalty, not including any treble value of any articles, adjudged or recovered under the provisions of this Act, shall go to the person who shall inform or sue for the same, and the remainder of the penalty, together with the treble value of any articles, or, where the offence shall be proved by the person who shall inform, the whole of the penalty, shall be paid, in the United Kingdom, to the general agent for the recruiting service in London, and in India to the military secretary of the government of the presidency to which the court by whom the penalty shall be adjudicated shall be subject, and elsewhere in Her Majesty's dominions to the local military accountant, to be at the disposal of the Secretary of State for the War Department, anything in an Act passed in the fifth and sixth

years of the reign of His late Majesty King William the Fourth, intituled "An Act to provide for the regulation of Municipal Corporations in England and Wales," or in any other Act or Acts, to the contrary notwithstanding. Every justice or court adjudging any penalty under this Act shall report the same immediately, if in the United Kingdom, to the said Secretary of State, if in India to the said military secretary, and if elsewhere in Her Majesty's dominions to the general or other officer commanding at the station.

92. Any justice in the United Kingdom within whose jurisdiction any soldier in Her Majesty's army, or on the permanent staff of the militia, having a wife or child, shall be billeted, may summon such soldier before him in the place where he is billeted, (which summons he is hereby directed to obey,) and take his examination in writing, upon oath, touching the place of his last legal settlement, and such justice shall give an attested copy of such examination to the person examined, to be by him delivered to his commanding officer, to be produced when required; which said examination and such attested copy thereof shall be at any time admitted as good and legal evidence of such last legal settlement before any justices or at any general or quarter sessions, although such soldier be dead or absent from the kingdom; provided that in case any soldier shall be again summoned to make oath as aforesaid, then, on such examination or such attested copy thereof being produced by him or by any other person on his behalf, such soldier shall not be obliged to take any other oath with regard to his legal settlement, but shall leave a copy of such examination, or a copy of such attested copy of examination, if required; provided also, that when no such examination shall have been required, the statement made by the recruit on his attestation of his place of birth shall be taken to be his last place of settlement until legally disproved.

93. When any person shall hold any canteen under proper authority of the War Department, it shall be lawful for any two justices within their respective jurisdictions to grant or transfer any beer, wine, or spirit licence to such persons, without regard to time of year or to the notices or certificates required by any Act in respect of such licences; and the commissioners of excise, or their proper officers within their respective districts, shall also grant such licences as aforesaid; and such persons so holding canteens, and having such licences, may sell therein victuals and exciseable liquors, as empowered by such excise licence, without being subject to any penalty or forfeiture.

94. All muster rolls and accounts and pay and pension lists which are required to be verified by declaration shall be so verified and attested free of stamp duty, and without fee or reward paid for such declaration or attestation.

95. All commissaries, regimental paymasters, and all other accountants for military services, storekeepers, and barrack masters, upon making up their accounts, and all commissaries and storekeepers upon returning from any foreign service, shall severally make the respective declarations described in the schedule to this Act annexed; which declarations, if made in any part of the United Kingdom, shall be made before some justice, or other person authorised to administer oaths and declarations, and if made on foreign service shall be made before the officer commanding in chief, or the second in command, or the quartermaster or deputy quartermaster general or any assistant quartermaster general of the army, who shall respectively have power to administer and receive the same.

96. All oaths and declarations which are authorised and required by this Act may be administered (unless where otherwise provided) by any justice of the peace, or other person having authority to administer oaths and declarations; and any person taking a false oath or declaration where an oath or declaration is authorised or required by this Act shall be deemed guilty of wilful and corrupt perjury, or of wilfully making a false declaration, and being thereof duly convicted shall be liable to such pains and penalties as by law any person convicted of wilful and corrupt perjury is subject and liable to; and every commissioned officer convicted before a general court-martial of perjury, or of wilfully making a false declaration, shall be cashiered, and every soldier or other person amenable to the provisions of this Act found guilty thereof by a general, district, or garrison court-martial shall be punished at the discretion of such court. In India, in all cases where any oath is hereby required to be taken, or any person is hereby required to be sworn, a solemn declaration or affirmation may be substituted, if by the laws for the time being in force in India such declaration or affirmation would be allowed to be substituted in the place of an oath, in case the party were about to depose as a witness in a civil action in any of the supreme courts at the presidencies; and any person wilfully and knowingly giving false testimony on oath or solemn declaration or affirmation in any case wherein such oath or solemn declaration or affirmation shall have been made for the purpose of this Act, or any proceedings under this Act, shall be deemed guilty of wilful and corrupt perjury, and, being

duly convicted thereof before a court-martial or otherwise, shall be liable to such pains and penalties as by any law in force in England, or by any law in force in India, any persons convicted of wilful and corrupt perjury are subject and liable to.

97. All crimes and offences which have been committed against any former Act for punishing mutiny and desertion, and for the better payment of the army and their quarters, or against any Act for punishing mutiny and desertion of officers and soldiers in the service of the East India Company, or against any of the Articles of War made and established by virtue of either of the same, may, during the continuance of this Act, be tried and punished in like manner as if they had been committed against this Act; and every warrant for holding any court-martial under any such former Act shall remain in full force, and all proceedings of courts-martial convened and held under any such warrant shall be continued, notwithstanding the expiration of such Act: Provided always, that no person shall be liable to be tried or punished for any offence against any of the said Acts or Articles of War which shall appear to have been committed more than three years before the date of the warrant for such trial, unless the person accused, by reason of his having absented himself, or of some other manifest impediment, shall not have been amenable to justice within that period, in which case such person shall be liable to be tried at any time not exceeding two years after the impediment shall have ceased.

98. It shall be the duty of all officers and soldiers to observe and conform to the provisions contained in "The Regimental Debts Act, 1863," and in the regulations for the better execution of the purposes of the said Act prescribed from time to time by warrant under the royal sign manual.

99. In all places in India where any body of Her Majesty's forces may be serving situate beyond the jurisdiction of any court of small causes established by or under the authority of the Governor General of India in council, actions of debt and all personal actions against officers or against persons licensed to act as sutlers, or other persons amenable to the provisions of this Act not being soldiers, shall be cognizable before a court of requests composed of military officers, and not elsewhere, provided the value in question shall not exceed four hundred rupees, and that the defendant was a person of the above description when the cause of action arose, which court the commanding officer of any camp, garrison, cantonment, or military post is hereby authorised

and empowered to convene. Whenever, owing to paucity of officers, or to any other cause, a court of requests cannot conveniently be held at the station where the defendant or defendants may be, it shall be lawful for the officer commanding the division or district to authorise the assembly of a court by the officer commanding at the nearest place where such court can be formed. Courts of requests shall in all practicable cases consist of five commissioned officers, and in no instance of less than three, and the president thereof shall in all practicable cases be a field officer, and in no case be under the rank of a captain, and every member shall have served five years as a commissioned officer; and the president and members assisting at any such court, before any proceedings be had before it, shall take the following oath, which oath shall be administered by the president of the court to the other members thereof, and to the president by any member having first taken the oath; (that is to say.)

‘ I swear, that I will duly  
‘ administer justice according to the evidence in  
‘ the matters that shall be brought before me.  
‘ So help me GOD.’

And all witnesses before any such court shall be examined in the same manner as in the case of a trial by courts-martial. All actions of debt and personal actions against persons amenable to this Act within the jurisdiction of any court of small causes shall be cognizable by such court to the extent of its powers; and all such actions where the amount sued for exceeds four hundred rupees shall be cognizable by a civil court or court of small causes only; and it shall be competent for any civil court or court of small causes, or for any military court of requests held in lieu thereof under the authority of this section, upon finding or awarding any debt or damage, either to award execution thereof generally, or to direct specially that the whole or any part thereof shall be stopped and paid over to the plaintiff out of any part not exceeding one half of any pay or allowance, or out of any other public money which may respectively be coming to the defendant in the current or any future month or months, or to direct the same to be so paid by instalments. In regard to awards of execution general civil courts and courts of small causes shall proceed in accordance with the rules of procedure for such courts in India; and in all cases where execution shall be awarded generally by a military court of requests, the debt, if not paid forthwith, shall be levied by seizure and public sale of such of the defendant's goods and property as may be found within the camp, garrison, cantonment, or military post, under a written order of the commanding officer, grounded on the judgment of the court, and all orders of such commanding officer as to the manner of such sale, or the person by whom

the same shall be made, or otherwise respecting the same, shall be valid and binding; and any goods and property of the defendant found within the limits of the camp, garrison, cantonment, or military post to which the defendant shall belong at any subsequent time shall be liable to be seized and sold in like manner in satisfaction of any remainder of such debt or damages; and if any question shall arise whether any such effects or property are liable to be taken in execution as aforesaid, the decision and order of the said commanding officer shall be final and conclusive with respect to the same, and if sufficient goods shall not be found within the limits of the camp, garrison, cantonment, or military post, then any public money or any part not exceeding one half of the pay or allowances accruing to the defendant shall be stopped in liquidation of such debt or damages; and if such defendant shall not receive pay as an officer or from any public department, but be a sutler, servant, or follower, he may be arrested by like order of the commanding officer, and imprisoned in some convenient place within the military boundaries for any period not exceeding two months, unless the debt be sooner paid; and the said commanding officer shall not, nor shall any person acting on his orders in respect of the matters aforesaid, incur any liability to any person or persons whomsoever for any act done by him in pursuance of the provisions aforesaid; and in cases where the said court shall direct specially that the whole or any part of the debt or damages shall be stopped and paid out of part of any pay and allowances, or out of any public money, the same shall be stopped and paid accordingly in conformity with direction: Provided always, that nothing herein-before contained shall enable any such action as aforesaid to be brought in a military court of requests by any officer or soldier against any officer: Provided also, that the articles of military equipment of any defendant shall not be deemed “goods and property” under this section.

100. The government of any of the presidencies in India may suspend the proceedings of any court-martial held in India on any officer or soldier belonging to Her Majesty's Indian forces within such presidencies respectively; and if any officer belonging to Her Majesty's Indian forces shall think himself wronged by the officer commanding the regiment, and shall upon due application made to him not receive the redress to which he may consider himself entitled, he may complain to his commander-in-chief in order to obtain justice, who is hereby required to examine into such complaint, and thereupon, either by himself or by his adjutant general, to make his report to the government of the presidency to which such officer belongs, in order to receive the further directions of such government.

101. Any officer or soldier, or other person subject to this Act, who shall be serving in the territories of any foreign state in India or in any country in India under the protection of Her Majesty, or at any place in Her Majesty's dominions in India (other than Prince of Wales Island, Singapore, or Malacca), at a distance of upwards of one hundred and twenty miles from the presidencies of Fort William, Fort Saint George, and Bombay respectively, and who shall be accused of having committed any offence which, if committed in England, would be punishable by the criminal law there, may, if the same be also punishable under the Indian penal code for the time being, be tried by a general court-martial to be appointed by the general or other officer commanding in chief in such place for the time being, and, if found guilty, shall be liable to be sentenced by such court-martial to suffer such punishment as may legally be awarded by any of Her Majesty's courts of criminal jurisdiction within Her Majesty's dominions of India in respect of a like offence committed within the jurisdiction of such last-mentioned court; but no sentence of a general court-martial for any such offence shall be carried into execution until the same shall have been duly confirmed; and it shall be lawful for such general or other officer commanding in chief as aforesaid to confirm the sentence of any such general court-martial; and such general or other officer as aforesaid may, if he shall think fit, suspend, mitigate, or remit the sentence; or, in the case of a sentence of penal servitude, may commute the same to imprisonment, with or without hard labour, for such period as to him shall seem fit: Provided always, that in all cases wherein a sentence of death or penal servitude shall have been awarded by any such general court-martial held for the trial of a commissioned officer, or where a sentence of death shall have been awarded by any such general court-martial held for the trial of any person subject to this Act other than a commissioned officer, such sentence shall not be carried into execution until it shall have been duly approved by the Governor General in Council, or Governor in Council of the presidency in the territories subordinate to which the offender shall have been tried: Provided also, that any person who may have been so tried as aforesaid shall not be tried for the same offence by any other court whatsoever.

102. This Act shall be and continue in force within Great Britain from the twenty-fifth day of

April one thousand eight hundred and seventy inclusive until the twenty-fifth day of April one thousand eight hundred and seventy-one; and shall be and continue in force within Ireland, and in Jersey, Guernsey, Alderney, Sark, and Isle of Man, and the islands thereto belonging, from the first day of May one thousand eight hundred and seventy inclusive until the first day of May one thousand eight hundred and seventy-one; and shall be and continue in force within the garrison of Gibraltar, the Mediterranean, and in Spain and Portugal, from the first day of August one thousand eight hundred and seventy inclusive until the first day of August one thousand eight hundred and seventy-one; and shall be and continue in force in all other parts of Europe where Her Majesty's forces may be serving, and in the West Indies and America, from the first day of September one thousand eight hundred and seventy inclusive until the first day of September one thousand eight hundred and seventy-one; and shall be and continue in force in India, and within the Cape of Good Hope, the Isle of France or Mauritius and its dependencies, Saint Helena, and the settlements on the western coast of Africa, from the first day of January one thousand eight hundred and seventy-one inclusive until the first day of January one thousand eight hundred and seventy-two; and shall be and continue in force within British Columbia and Vancouver's Island from the date of the promulgation thereof in general orders there inclusive until the first day of January one thousand eight hundred and seventy-two; and shall be and continue in force in all other places from the first day of February one thousand eight hundred and seventy-two inclusive until the first day of February one thousand eight hundred and seventy-three: Provided always, that this Act shall, from and after the receipt and promulgation thereof in general orders in any part of Her Majesty's dominions or elsewhere beyond the seas, become and be in full force, anything herein stated to the contrary notwithstanding.

103. The words Commander-in-Chief in this Act shall be held to include the field marshal or other officer commanding in chief Her Majesty's forces for the time being.

104. The ninth section of The Army Enlistment Act, 1867, and the tenth section of the same Act, except as to enlistments which may have been made thereunder, are repealed.





## SCHEDULES referred to by the foregoing Act.

NOTICE to be given to a RECRUIT at the time  
of his ENLISTMENT.

Date 187 .

\*

TAKE Notice, that you enlisted with  
at o'clock†  
on the day of for the  
regiment [instead of the words "for the  
regiment" any words may be sub-  
stituted which are applicable to the case], and if  
you do not come to [here name some place]  
on or before o'clock† on the day of

\* Name of the recruit. † A.M. or P.M. as the case may be.

for the purpose of being taken before a  
justice, either to be attested or to release your-  
self from your engagement by repaying the  
enlisting shilling and any pay you may have  
received as a recruit, and by paying twenty  
shillings as smart money, you will be liable to  
be punished as a rogue and vagabond.

You are hereby also warned that you will be  
liable to the same punishment if you make any  
wilfully false representation at the time of  
attestation, or false answers to the questions  
now asked of you.

Signature of the non-commis-  
sioned officer serving the notice. }

QUESTIONS this day put to the RECRUIT before ENLISTMENT, as required by the MUTINY ACT.

1. What is your name? - - - - -
2. In what parish, and in or near what town, and in what county  
were you born? - - - - -
3. What is your age? - - - - -
4. What is your trade or calling? - - - - -
5. Are you an apprentice? - - - - -
6. Are you married, or a widower, and, if so, have you any children?
7. Do you now belong to any regiment or any corps in Her Ma-  
jesty's army, or to the militia, or to the Naval Coast Volunteers,  
or to the Royal Naval Reserve Force? - - - - -
8. Have you ever served in the army, marines, or in Her Majesty's  
Indian Forces? - - - - -
9. Have you ever been rejected as unfit for Her Majesty's service? - - - - -
10. Have you ever been marked with the letter D. or letters B.C.? - - - - -

## ATTESTATION PAPER.

Questions to be put to the recruit before attestation.

1. What is your name? - - - - -
2. In what parish, and in or near what town, and in what county were you born? - - - - - { In the parish of \_\_\_\_\_ in or near the  
town of \_\_\_\_\_ in the county of \_\_\_\_\_
3. What is your age? - - - - - years \_\_\_\_\_ months.
4. What is your trade or calling? - - - - -
5. Are you an apprentice? - - - - -
6. Are you married? - - - - -
7. { Do you now belong to the militia, or to the  
Naval Coast Volunteers, or to the Royal  
Naval Reserve Force? or  
Do you belong to any regiment or corps in  
Her Majesty's army? - - - - -
8. Have you ever served in the army, marines,  
militia, navy, or in Her Majesty's Indian  
Forces? \* - - - - -

\* If so, the recruit is to state the particulars of his former service, and the cause of his discharge, and is to produce his  
parchment certificate of discharge.

9. Have you ever been rejected as unfit for Her Majesty's service, or for Her Majesty's Indian Forces, upon any prior enlistment? - - -
10. Have you ever been marked with the letter "D" or the letters "B.C."? - - -
11. Where, when, and by whom were you enlisted? At \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ m. By \_\_\_\_\_
12. Did you receive a notice, and did you understand its meaning? - - -
13. For what bounty and kit did you enlist? \_\_\_\_\_ and a free kit.
14. Have you any objection to make to the manner of your enlistment? - - -
15. Are you willing to be attested to serve in the regiment of \_\_\_\_\_ or for "general service" for the term of twelve years, provided Her Majesty should so long require your services; and also for such further term, not exceeding twelve months, as shall be directed by the commanding officer on any foreign, colonial, or Indian station? - - -
- Signature of recruit \_\_\_\_\_
- Witness \_\_\_\_\_

**DECLARATION to be made by RECRUIT on ATTESTATION.**

I do solemnly and sincerely declare, that to the best of my knowledge and belief the above answers to the foregoing questions made and signed by me are true; and that I am willing to be attested for the term of twelve years, provided Her Majesty should so long require my services, and also for such further term, not exceeding twelve months, as shall be directed by the commanding officer on any foreign, colonial, or Indian station.

Signature of recruit \_\_\_\_\_

Signature of witness \_\_\_\_\_

**OATH to be taken by a RECRUIT on ATTESTATION.**

I do make oath, that I will be faithful and bear true allegiance to Her Majesty, her heirs and successors, and that I will, as in duty bound, honestly and faithfully defend Her Majesty, her heirs and successors, in person, crown, and dignity, against all enemies, and will observe and obey all orders of Her Majesty, her heirs and successors, and of the generals and officers set over me.

So help me GOD.

Witness my hand,

Signature of recruit \_\_\_\_\_

Witness present \_\_\_\_\_

The above questions were asked of the said \_\_\_\_\_ and answered by him in my presence, as herein recorded; and the said \_\_\_\_\_ made the above declaration and oath before me at this \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ m.

Signature of the justice \_\_\_\_\_

*Note.*—The recruit should, if he requires it, receive a certified copy of the declaration.

It is desirable that at least half an hour beyond the twenty-four hours prescribed by the Mutiny Act should have expired before attestation, and that a recruit should invariably be attested at least half an hour before the expiration of ninety-six hours from the time of enlistment.

**DECLARATION to be made by a SOLDIER, or PERSON having been a SOLDIER, on renewing his service.**

I do declare, that I am at present <sup>(1)</sup> in captain \_\_\_\_\_ company, in the \_\_\_\_\_ regiment; <sup>(2)</sup> that I enlisted on the \_\_\_\_\_ day of \_\_\_\_\_ for a term of \_\_\_\_\_ years; that I am of the age of \_\_\_\_\_ years; and that I will serve Her Majesty, her heirs and successors, in \_\_\_\_\_ regiment <sup>(2)</sup> for such further term as

<sup>(1)</sup> Or was, as the case may be.

<sup>(2)</sup> The foregoing portion of this declaration may be altered, by substituting the word "corps" for "regiment," to suit each particular case.

shall complete a total service of twenty-one years, provided my services should so long be required, and also for such further term, not exceeding twelve months, as shall be directed by the commanding officer on any foreign, colonial, or Indian station.

Declared before me \_\_\_\_\_

Date \_\_\_\_\_

Place, at \_\_\_\_\_

\_\_\_\_\_  
Signature of soldier.

\_\_\_\_\_  
Signature of witness.

**FORM OF OATH to be taken by a MASTER  
whose APPRENTICE has absconded.**

I of \_\_\_\_\_ do make oath, that I am by trade a \_\_\_\_\_ and that \_\_\_\_\_ was bound to serve as an apprentice to me in the said trade, by indenture dated the \_\_\_\_\_ day of \_\_\_\_\_ for the term of \_\_\_\_\_ years; and that the said \_\_\_\_\_ did on or about the \_\_\_\_\_ day of \_\_\_\_\_ abscond and quit my service without my consent; and that to the best of my knowledge and belief the said \_\_\_\_\_ is aged about \_\_\_\_\_ years. Witness my hand at the \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_

Sworn before me at this }  
day of one }  
thousand eight hundred and }

**FORM OF JUSTICE'S CERTIFICATE to be given to  
the MASTER of an APPRENTICE.**

to wit. } I \_\_\_\_\_ one of Her Majesty's  
certify, that \_\_\_\_\_ justices of the peace of \_\_\_\_\_  
before me at \_\_\_\_\_ of \_\_\_\_\_ came  
of \_\_\_\_\_ the \_\_\_\_\_ day  
of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_  
, and made oath that he was by  
trade a \_\_\_\_\_, and that \_\_\_\_\_ was  
bound to serve as an apprentice to him in the  
said trade, by indenture dated the  
day of \_\_\_\_\_ for the term of \_\_\_\_\_  
years; and that the said apprentice did on or  
about the \_\_\_\_\_ day of \_\_\_\_\_  
abscond and quit the service of the said  
\_\_\_\_\_ without his consent, and that to the  
best of his knowledge and belief the said ap-  
prentice is aged about \_\_\_\_\_ years.

**FORM OF OATH to be taken by a MASTER  
whose indentured LABOURER in any of Her  
Majesty's colonies or possessions has ab-  
sconded.**

I \_\_\_\_\_ of \_\_\_\_\_ do make oath,  
that \_\_\_\_\_ was bound to me to serve as

an indentured labourer by indenture dated the  
\_\_\_\_\_ day of \_\_\_\_\_ for the term  
of \_\_\_\_\_ years, and that the said  
\_\_\_\_\_ did on or about the \_\_\_\_\_ day of \_\_\_\_\_  
abscond and quit my service without my consent.  
Witness, &c. [as for apprentice.]

**FORM OF JUSTICE'S CERTIFICATE to be given  
to the MASTER of an indentured LABOURER.**

} I \_\_\_\_\_ one of Her Majesty's  
to wit. } justices of the peace of \_\_\_\_\_  
certify, that \_\_\_\_\_ of \_\_\_\_\_ came  
before me at \_\_\_\_\_ the \_\_\_\_\_ day  
of \_\_\_\_\_ and made oath that  
\_\_\_\_\_ was bound to serve as an indentured labourer  
to him by indenture dated the \_\_\_\_\_ day  
of \_\_\_\_\_ for the term of \_\_\_\_\_  
years, and that the said indentured labourer did  
on or about the \_\_\_\_\_ day of \_\_\_\_\_  
abscond and quit the service of the said  
\_\_\_\_\_ without his consent.

**FORM OF DECLARATION OF ATTESTATION of a  
COMMISSARY'S or PURVEYOR'S ACCOUNTS.**

I \_\_\_\_\_ do solemnly and sincerely  
declare, that I have not applied any monies or  
stores or supplies under my care or distribution  
to my own use, or to the private use of any  
other person by way of loan to such person or  
otherwise, or in any manner applied them, or  
knowingly permitted them to be applied, to any  
other than public purposes, according to the  
duty of my office.

Declared before me by the }  
within-named }  
this \_\_\_\_\_ day of \_\_\_\_\_ }

*Justice of the Peace of  
or commander-in-chief,  
or second in command, et  
cetera, the army serving in  
et cetera [as the  
case may be].*

**FORM OF DECLARATION OF ATTESTATION of a  
STOREKEEPER'S ACCOUNTS.**

I \_\_\_\_\_, storekeeper at \_\_\_\_\_,  
do hereby solemnly and sincerely declare, that  
I have charged myself in this account with the  
several sums drawn for or received by me on  
imprests, or for rents, sale of old stores, or for  
any other article or service; that they are just  
and true, and include every sum for which I am  
accountable during the period stated. I also  
solemnly declare, that I have not, directly or  
indirectly, received any profit, fee, emolument,  
or advantage whatever beyond my salary and  
authorized allowances, except the trifling advan-  
tage which may have arisen in respect to the  
fractional parts of a penny in the totals of the

pay lists, as sanctioned by the regulations of 19th December 1832 <sup>1174</sup> (see art. 246, at page 65, of Home Regulations); and I further solemnly declare, that the several sums of money for which I have taken credit as disbursements in this account, amounting to \_\_\_\_\_, have been actually and bonâ fide paid by me for the respective services, without any deductions, to the several persons entitled to the same, and that the receipts which accompany this account have been actually signed and witnessed by the persons stated therein; and I make this declaration, conscientiously believing the same to be true.

Storekeeper at \_\_\_\_\_.

Declared before me at  
this day of 18 , }

Magistrate for \_\_\_\_\_.

#### FORM OF DECLARATION OF ATTESTATION of a BARRACK MASTER'S ACCOUNTS.

I \_\_\_\_\_, barrack master of the \_\_\_\_\_ barracks at \_\_\_\_\_, do hereby solemnly and sincerely declare, that I have charged myself in this account with the several sums drawn for or received by me on imprests, or for rents, damages, and deficiencies, washing sheets, or for any other article or service; that they are just and true, and include every sum for which I am accountable during the period stated. I also solemnly declare, that I have not, directly or indirectly, received any profit, fee, emolument, or advantage whatever from or on account of the purchase or issue of any of the articles for the service of the said barracks, nor have I any property in lands, houses, tenements, or any article used or employed in the service of the War Department; and I further solemnly declare, that the several sums of money for which I have taken credit as disbursements in this account, amounting to \_\_\_\_\_, have been actually and bonâ fide paid by me for the respective services, without any deductions, to the several persons entitled to the same, and that the receipts which accompany this account have been actually signed and witnessed by the persons stated therein; and I make this declaration, conscientiously believing the same to be true.

Barrack Master at \_\_\_\_\_.

Declared before me at  
this day of 18 , }

Magistrate for \_\_\_\_\_.

#### FORM OF DECLARATION OF ATTESTATION of a PAYMASTER'S ACCOUNTS.

I \_\_\_\_\_ do solemnly and sincerely declare, that the foregoing pay list of the \_\_\_\_\_ regiment of \_\_\_\_\_, for the period ended \_\_\_\_\_ 186 , contains charges of pay for only such non-commissioned officers, drummers, fifers, buglers, and privates as were effective and entitled to pay during, and regularly mustered at, the periods set against their names; that all those men who were not present at the respective musters taken by me on the \_\_\_\_\_, the \_\_\_\_\_, and the \_\_\_\_\_

have the true reasons of their absence stated against their names; and that every absence affecting the pay or allowances of such men which occurred between the respective musters is properly accounted for.

Also, that the list of commissioned officers prefixed to the said pay list contains a true and just statement of the names of all the commissioned officers who have been effective and entitled to pay as belonging to the said regiment for the periods therein set down against their respective names; also, that all the remarks opposite to their names on the muster roll have been correctly copied therein; and that the sum debited in the general state of this pay list for the pay of officers has been actually received by me and paid to them respectively.

Also, that the whole of the sums debited in this pay list and account, amounting to \_\_\_\_\_, have been actually and bonâ fide disbursed by me in conformity with the established regulations, and that the total sum received, drawn for, or required to be remitted for the several services therein charged, including every receipt whatever, for which I am required to give credit in these accounts, is \_\_\_\_\_.

Also, that the statement at the foot of this page contains a full and correct list of all abstracts of examination, and of all decisions on abstracts of examination, of the pay list of this regiment received between the \_\_\_\_\_ of \_\_\_\_\_ 186 (the date of the last pay list transmitted to the War Office being that for the period ended the \_\_\_\_\_ 186 ) and the \_\_\_\_\_ of \_\_\_\_\_ 186 , the date of this pay list.

Also, that the total amount of the sums disallowed in the said decisions is credited in this pay list, in conformity with article 21 of the explanatory directions, dated the 1st July 1848.

Also, that to the best of my knowledge and belief both my sureties are now living; that the property of each is at least double that for which

he is surety; and that they respectively reside at the places under mentioned.

Names of sureties.

Places of residence.

\_\_\_\_\_

\_\_\_\_\_

Paymaster.

Declared and subscribed  
before me, at \_\_\_\_\_ day } *Justice of*  
of 18 . } *the Peace for* \_\_\_\_\_

# FORM OF DECLARATION OF ATTESTATION OF the ACCOUNTS of a MILITARY ACCOUNTANT.

I hereby solemnly and sincerely declare, that this account, comprised in \_\_\_\_\_ folios, is just and true, according to the best of my knowledge, information, and belief; and I make this declaration, conscientiously believing the same to be true.

Declared before me, } *Military Accountant.*  
at this } *Justice of*  
day of 18 . } *the Peace for* \_\_\_\_\_

No.

DESCRIPTION RETURN of  
himself," as the case may be,] on the  
mitted to confinement at \_\_\_\_\_  
a deserter from [insert regiment or corps].

who was apprehended [or "surrendered  
day of \_\_\_\_\_ and was com-  
day of \_\_\_\_\_ as

Age -	-	-	-	-	-	-	
Height	-	-	-	-	-	-	Feet. Inches.
Complexion -	-	-	-	-	-	-	
Hair -	-	-	-	-	-	-	
Eyes -	-	-	-	-	-	-	
Marks	-	-	-	-	-	-	
Probable date of enlistment, and where	-	-					
Probable date of desertion, and from what place	-						
Name and occupation and address of the person by whom or through whose means the deserter was apprehended and secured.							
* Particulars in the evidence on which the prisoner is committed, and showing whether he surrendered or was apprehended, and in what manner, and upon what grounds.							

\* It is important for the public service, and for the interest of the deserter, that this part of the return should be accurately filled up, and the details should be inserted by the magistrate in his own handwriting, or, under his direction, by his clerk.

I do hereby certify, that the prisoner has been duly examined before me as to the circumstance herein stated, and has declared in my presence that he† a deserter from the above-mentioned corps.

\_\_\_\_\_ *Signature and address*  
\_\_\_\_\_ *of magistrate.*

\_\_\_\_\_ *Signature of prisoner.*

\_\_\_\_\_ *Signature of informant.*

† Insert, "is" or "is not," as the case may be.

I certify, that I have inspected the prisoner, and consider him‡ \_\_\_\_\_ for military service.

\_\_\_\_\_ *Signature of military*  
\_\_\_\_\_ *medical officer, or of private*  
\_\_\_\_\_ *medical practitioner.*

‡ Insert "fit" or "unfit," as the case may be; and, if unfit, state the cause of unfitness.

§ No fee will be allowed to a private medical practitioner where a military medical officer is stationed, unless it is shown that his services were not available.

## CHAP. 8.

*Marine Mutiny.*

## ABSTRACT OF THE ENACTMENTS.

1. Power to Lord High Admiral, &c. to make articles for the punishment of mutiny, desertion, &c.
2. As to offences against former Mutiny Acts and Articles of War. Limitation as to time.
3. Provisions of this Act to extend to Jersey, &c.
4. The ordinary course of law not to be interfered with.
5. No person tried by civil power to be punished by court-martial for same offence except by cashiering, &c.
6. Marines to be subject to the discipline of the navy while on board ship.
7. Power to Lord High Admiral, &c. to grant commissions for holding general courts-martial, &c.  
Places where offenders may be tried.
8. Powers of general courts-martial.
9. Powers of district or garrison courts-martial.
10. Powers of divisional and detachment courts-martial.
11. Courts-martial on line of march or in transport ships, &c.
12. Powers of detachment general courts-martial.
13. Officers of the marine and land forces may sit in conjunction on courts-martial.
14. If no superior officer of land forces is present in command of a district, &c., an officer of marines may convene a court-martial.
15. President of courts-martial.
16. Proceedings at trial.
17. Swearing and summoning witnesses.
18. No second trial, but revision allowed.
19. Crimes punishable with death.
20. Commutation of death for penal servitude or imprisonment, &c.
21. Embezzlement punishable by penal servitude, imprisonment, &c.
22. As to execution of sentences of penal servitude in the United Kingdom.
23. As to execution of sentences in the colonies.
24. Sentence of penal servitude may be commuted for imprisonment.
25. Of forfeitures, when combined with penal servitude.
26. Disposal of convict after sentence of penal servitude.
27. Power to inflict corporal punishment in certain cases.
28. Power to inflict corporal punishment and imprisonment.
29. Power to commute corporal punishment.
30. Power to commute a sentence of cashiering.
31. Forfeiture of pay and pension by sentence of court-martial.
32. Forfeiture of pay on conviction of desertion or felony.
33. Forfeiture of pay when in confinement; or during absence on commitment under a charge, or in arrest for debt; or when prisoner of war; or when convicted of desertion or absence without leave; or when absent without leave.
34. Stoppages.
35. Discharge with ignominy.
36. Marking deserters or marines discharged with ignominy.
37. Power of imprisonment by different kinds of courts-martial.
38. Imprisonment of offender already under sentence.
39. Term and place of imprisonment.
40. Proviso for removal of prisoners.
41. Custody of prisoners under military sentence in common gaols.
42. Subsistence of prisoners in common gaols.
43. Notice to be given of expiration of imprisonment in common gaols.
44. Military prisons established under any Act for punishing mutiny and desertion in the army to be deemed public prisons.
45. Musters, and penalty on false musters.
46. Verifying of muster rolls.
47. Trials for desertion after subsequent re-enlistment.

48. *Apprehension of deserters. Transfer of deserters.*
49. *Penalty on marines attempting to desert from head quarters.*
50. *Temporary custody of deserters in gaols.*
51. *Fraudulent confession of desertion.*
52. *Punishment for inducing marines to desert.*
53. *Extension of furlough in case of sickness.*
54. *Marines liable to be taken out of Her Majesty's service only for felony and certain misdemeanors, or for debts amounting to 30l. and upwards; but not liable to be taken out of Her Majesty's service for debts under 30l., or for not maintaining their families, or for breach of contract.*
55. *Officers not to be sheriffs, mayors, &c.*
56. *Questions to be put to recruits on enlisting.*
57. *Recruits when deemed to be enlisted.*
58. *When recruits to be taken before a justice.*
59. *Dissent and relief from enlistment.*
60. *Attesting of recruits.*
61. *Recruits until they have been attested or received pay not triable by court-martial, but in certain cases punishable as rogues and vagabonds.*
62. *Attested recruits triable in some cases either before two justices or before a court-martial.*
63. *Recruits absconding.*
64. *As to militiamen enlisting into regular forces.*
65. *Volunteer permanent staff officers enlisting into regular forces.*
66. *Penalty on persons offending as to enlistment.*
67. *As to re-enlistment abroad.*
68. *Apprentices enlisting to be liable to serve after the expiration of their apprenticeship.*
69. *Claims of masters to apprentices.*
70. *No apprentice claimed by the master shall be taken away without a warrant. Punishment of apprentices enlisting.*
71. *Removal of doubts as to attestation of marines.*
72. *Power to Admiralty to order pay to be withheld.*
73. *Billeting of marines.*
74. *Allowance to innkeepers.*
75. *Supply of carriages.*
76. *Rates for carriages.*
77. *As to supply of carriages, &c. in cases of emergency.*
78. *Justices of peace to direct payment of sums expended for carriages, &c.*
79. *Lord Lieutenant of Ireland may depute persons to sign routes.*
80. *Exemption from tolls.*
81. *Marching money on discharge.*
82. *Penalties upon civil subjects offending against the laws relating to billets and carriages.*
83. *Penalty upon officers of marines so offending.*
84. *Penalty for forcible entry in pursuit of deserters without warrant.*
85. *Penalty for purchasing clothes, &c. from any marine.*
86. *Penalty on unlawful recruiting.*
87. *Penalty on killing game without leave.*
88. *Limitations of actions.*
89. *Recovery of penalties.*
90. *Appropriation of penalties.*
91. *Licences of canteens.*
92. *Mode of recording a marine's settlement.*
93. *Administration of oaths. Perjury.*
94. *Definition of terms. Marines not to be billeted in private houses, &c.*
95. *Duration of Act.*

*Schedule.*

An Act for the Regulation of Her Majesty's Royal Marine Forces while on shore.  
(4th April 1870.)

WHEREAS it is judged necessary for the safety of the United Kingdom, and the defence of the possessions of this realm, that a body of Royal

Marine forces should be employed in Her Majesty's fleet and naval service, under the direction of the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral aforesaid: And whereas the said forces may frequently be quartered or be on shore, or sent to do duty or be on board transport ships or merchant ships or

vessels, or ships or vessels of Her Majesty, or other ships or vessels, or they may be under other circumstances in which they will not be subject to the laws relating to the government of Her Majesty's forces by sea: And whereas no man can be forfeited of life or limb, or subjected in time of peace to any kind of punishment within this realm, by martial law, or in any other manner than by the judgment of his peers, and according to the known and established laws of this realm; yet nevertheless it being requisite for the retaining of such forces in their duty that an exact discipline be observed, and that marines who shall mutiny or stir up sedition, or shall desert Her Majesty's service, or be guilty of any other crime or offence in breach of or to the prejudice of good order and discipline, be brought to a more exemplary and speedy punishment than the usual forms of the law will allow:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. It shall be lawful for the said Lord High Admiral, or the Commissioners for executing the office of Lord High Admiral aforesaid, from time to time to make, ordain, alter, and establish rules and Articles of War, under the hand of the said Lord High Admiral, or under the hands of any two or more of the said Commissioners, for the better government of Her Majesty's Royal Marine forces, and for the punishment of mutiny, desertion, immorality, breach of discipline, misbehaviour, neglect of duty, and any other offence or misconduct of which they shall be guilty, in any place on shore or afloat in or out of Her Majesty's dominions, or at any time when or under any circumstances in which they shall not be amenable to the laws for the government of Her Majesty's ships, vessels, and forces by sea, and for regulating the proceedings of courts-martial, which rules and articles shall be judicially taken notice of by all judges and in all courts whatsoever; and copies of the same shall, as soon as conveniently may be after the same shall have been made, be transmitted by the Secretary of the Admiralty for the time being (certified under his hand) to the judges of Her Majesty's superior courts at Westminster, Dublin, and Edinburgh respectively, and also to the governors of Her Majesty's dominions abroad; provided that no person within the United Kingdom of Great Britain and Ireland or within the British Isles shall by such Articles of War be subject to suffer any punishment extending to life or limb, or to be kept in penal servitude, except for crimes which are by this Act expressly made liable to such punishment as aforesaid, or shall be subject, with reference to any crimes made punishable by

this Act, to be punished in any manner which may be inconsistent with the provisions of this Act.

2. All crimes and offences committed against any former Act made for the regulation of the Royal Marine forces while on, shore, or against any of the rules, regulations, or Articles of War made and established by virtue of the same, may, during the continuance of this Act, be tried, inquired of, and punished in like manner as if they had been committed against this Act; and every warrant for holding any court-martial under any former Act shall remain in full force notwithstanding the expiration of such Act; and all proceedings of any court-martial upon any trial begun under the authority of such former Act shall not be discontinued by the expiration of the same: Provided always, that no person shall be liable to be tried and punished for any offence against any of the said Acts or Articles of War which shall appear to have been committed more than three years before the date of the commission or warrant for such trial, unless the person accused, by reason of his having absented himself, or of some other manifest impediment, shall not have been amenable to justice within that period, in which case such person shall be liable to be tried at any time not exceeding two years after the impediment shall have ceased; and provided also, that if any officer or marine in any place beyond the seas shall commit any of the offences punishable by court-martial under this Act, and shall escape and come or be brought into this realm before he be tried for the same, he shall, when apprehended, be tried for the same as if such offence had been committed within this realm.

3. This Act shall extend to the islands of Jersey, Guernsey, Alderney, Sark, and Man, and the islands thereto belonging, as to the provisions herein contained for enlisting of recruits, whether minors or of full age, and swearing and attesting such recruits, and for mustering and paying, and to the provisions for trial and punishment of officers and marines who shall be charged with mutiny and desertion or any other of the offences which are by this Act declared to be punishable by the sentence of a court-martial, and also to the provisions which relate to the punishment of persons who shall conceal deserters, or shall knowingly buy, exchange, or otherwise receive any arms, medals for good conduct or for distinguished or other service, clothes, military furniture, or regimental necessaries from any marine or deserter, or who shall cause the colour of any such clothes to be changed; and also to the provisions for exempting marines from being taken out of Her Majesty's service for not supporting or for leaving chargeable to any parish any wife



or child or children, or on account of any breach of contract to serve or work for any employer, or on account of any debts under thirty pounds in the said islands.

4. Nothing in this Act contained shall be construed to extend to exempt any officer or marine from being proceeded against by the ordinary course of law when accused of felony or misdemeanor, or of any misdemeanor other than the misdemeanor of refusing to comply with an order of justices for the payment of money; and any commanding officer who shall neglect or refuse, when due application shall be made to him for that purpose, to deliver over to the civil magistrate any officer or marine, or who shall wilfully obstruct, neglect, or refuse to assist any peace officer in apprehending any such offender, shall, upon conviction thereof in any of Her Majesty's courts at Westminster, Dublin, or Edinburgh, be deemed to be thereupon cashiered, and shall be utterly disabled to hold any civil or military office or employment in Her Majesty's service; and a certificate of such conviction shall be transmitted to the Secretary of the Admiralty.

5. No person subject to this Act having been acquitted or convicted of any crime or offence by the civil magistrate or by the verdict of a jury shall be liable to be again tried for the same crime or offence by a court-martial, or to be punished for the same otherwise than by cashiering in the case of a commissioned officer, or in the case of a warrant officer by reduction to an inferior class, or to the rank of a private marine, by order of the Lord High Admiral, or the Commissioners for executing the office of Lord High Admiral, or in the case of a non-commissioned officer, by reduction to the ranks, by order of the commandant of the division to which such non-commissioned officer may belong; and whenever any officer or marine shall have been tried before a court of ordinary criminal jurisdiction, the clerk of the court or other officer having the custody of the records of such court, or the deputy of such clerk, shall, if required by the officer commanding the division to which such officer or marine belongs, transmit to him a certificate containing the substance and effect only, omitting the formal part, of the indictment, conviction, and entry of judgment thereon or acquittal of such officer or marine, and shall be allowed for such certificate a fee of three shillings.

6. All of Her Majesty's Royal Marine forces shall, during the time they shall be respectively borne on the books of or be on board any of Her Majesty's ships or vessels in commission, either as part of the complement or as supernumeraries, or otherwise, be subject and liable in every respect to the laws for the government of Her Majesty's

forces by sea, and to the rules and discipline of the Royal Navy for the time being, and shall and may be proceeded against and punished for offences committed by them whilst so borne or on board, in the same manner as the officers and seamen employed in the Royal Navy may be tried or punished; except when and so long as any marine officers or marines shall be landed from any of Her Majesty's ships, and be employed in military operations on shore, and when on such occasions the senior naval officer present shall deem it expedient to issue an order declaring that such marine officers and marines shall during such employment on shore be subject to the regulations of this Act, in which cases, and while such order shall remain in force, they shall be subject to such regulations, and be tried and punished under this Act accordingly for any offences to be committed by them while so on shore; and, with or without any commission or warrant from the said Lord High Admiral or the said Commissioners for that purpose, the officer commanding in chief or commanding for the time being any such marine officers or marines shall have power and authority to convene, and to authorise any officer to convene, courts-martial under this Act, as occasion may require, for the trial of offences committed by any of the Royal Marine forces, whether the same shall have been committed before or after such officer shall have taken upon himself such command: Provided always, that if any marine officer or marine so borne on the books of any of Her Majesty's ships or otherwise shall commit any offence for which he shall not be amenable to a naval court-martial, he may be tried and punished for the same in the same manner as other officers or marines may be tried and punished for the like offences under the authority of this Act; or if the Commissioners for executing the office of Lord High Admiral aforesaid so direct, he may be so tried and punished for any offence committed by him on shore, whether he be or be not amenable to a naval court-martial for the same.

7. It shall be lawful for the said Lord High Admiral, or the Commissioners for executing the office of Lord High Admiral aforesaid, from time to time to grant commissions or warrants under the hand of the said Lord High Admiral, or under the hands of any two or more of the said Commissioners, for the holding of general and other courts-martial within the United Kingdom of Great Britain and Ireland, and elsewhere out of the same, in like manner as has been heretofore used, and for bringing offenders against this Act and the Articles of War to justice, and to erect and constitute courts-martial, as well within the said United Kingdom and the British Isles as in any of Her Majesty's garrisons or dominions or elsewhere beyond the seas, and to grant com-

missions or warrants to the officer or officers commanding in chief or commanding for the time being any of Her Majesty's Royal Marine forces, as well within the said United Kingdom as Her Majesty's other dominions, and in any foreign parts out of the same dominions, for convening, as well as for authorising any officer to convene, courts-martial, as occasion may require, for the trial of offences committed by any of the Royal Marine forces, whether the same shall have been committed before or after such officer shall have taken upon himself such command, or before or after any such commission or warrant shall be granted, provided that the officer so authorised be not below the degree of a field officer, except in detached situations beyond seas, where a captain may be authorised to convene district or garrison courts-martial; and any person subject to this Act who shall, in any of Her Majesty's dominions or elsewhere, commit any of the offences for which he may be liable to be tried by court-martial by virtue of this Act or of the Articles of War, may be tried and punished for the same in any part of Her Majesty's dominions, or other place where he may have come or be after the commission of the offence, as if the offence had been committed where such trial shall take place.

8. Every general court-martial convened within the United Kingdom or the British Isles shall consist of not less than nine commissioned officers, each of whom shall have held a commission for three years before the date of the assembly of the court. Every general court-martial shall have power to sentence any officer of marines or marine to suffer death, penal servitude, imprisonment, forfeiture of pay or pension, or any other punishment which shall accord with the usage of the service; but no sentence of death by a court-martial shall pass unless two thirds at least of the officers present shall concur therein. No sentence of penal servitude shall be for a period of less than five years, and no sentence of imprisonment shall be for a period longer than two years.

9. Every district or garrison court-martial convened within the United Kingdom or the British Isles shall consist of not less than seven commissioned officers, and shall have the same power as a general court-martial to sentence any marine to such punishments as shall accord with the provisions of this Act; provided that the sentence of a district or garrison court-martial shall be confirmed by the general officer, governor, or senior officer in command of the district, garrison, island, or colony, and that no such district or garrison court-martial shall have power to try a commissioned officer, or to pass any sentence of death or penal servitude.

10. A divisional or detachment court-martial shall consist of not less than five commissioned officers, unless it be found impracticable to assemble that number, in which case three shall be sufficient, and shall have power to sentence any marine to corporal punishment or to imprisonment, and forfeiture of pay, in such manner as shall accord with the provisions of this Act.

11. In cases of mutiny and insubordination accompanied with personal violence or of other offences committed on the line of march, or on board any transport ship, convict ship, or merchant vessel, the offender may be tried by a divisional or detachment court-martial, and the sentence may be confirmed and carried into execution on the spot by the officer in immediate command, provided that the sentence shall not exceed that which a divisional court-martial is competent to award.

12. It shall be lawful for any officer commanding any detachment or portion of Her Majesty's Royal Marine forces, upon complaint made to him of any offence committed against the property or person of any inhabitant of or resident in any country in which Her Majesty's Royal Marine forces are so serving by any person under the immediate command of any such officer, to summon and cause to be assembled a detachment general court-martial, which shall consist of not less than three commissioned officers, for the trial of any such person, notwithstanding such officer shall not have received any warrant empowering him to assemble courts-martial; and every such court-martial shall have the same powers in regard to summoning and examining witnesses, trial of and sentence upon offenders, as are granted by this Act to general courts-martial: Provided always, that no sentence of any such detachment court-martial shall be executed until the officer commanding the army to which the division, brigade, detachment, or party to which any person so tried shall belong shall have approved and confirmed the same.

13. When it is necessary or expedient, a court-martial composed exclusively of officers of the Royal Marines, or a court-martial composed of officers of Her Majesty's Army, or of Her Majesty's Indian Army, or of both or of either, together with officers of the Royal Marines, whether the commanding officer by whose order such court-martial is assembled belongs to the land or to the marine forces, may try a person belonging to any one of the said three services; provided that when the person to be tried shall belong to Her Majesty's Royal Marine forces, then the provisions of this Act, or of such Act as shall be then and there in force for the regulation of Her Majesty's Royal Marine forces while on shore,

and the oaths therein respectively prescribed, and the Rules and Articles of War relating to the Royal Marines then and there in force, shall be applicable to such court, and the proceedings thereof and relating thereto; but where the person to be tried shall belong to Her Majesty's Army, or shall belong to Her Majesty's Indian Army, and be within the United Kingdom, then the proceedings of such court shall be regulated as if the court were composed of officers of Her Majesty's Army only, and the provisions of the Act then and there in force for the punishment of mutiny and desertion, and for the better payment of the army and their quarters, and the oaths therein prescribed, and the Rules and Articles of War relating to Her Majesty's Army then and there in force, shall be applicable to such court, and the proceedings thereof and relating thereto; and where the person to be tried shall belong to Her Majesty's Indian Army, and be out of the United Kingdom, the provisions of such Act or Acts as shall be then and there in force for punishing mutiny and desertion of officers and soldiers in Her Majesty's Indian Army, and the Rules and Articles of War, if any, relating to such officers and soldiers then and there in force, shall be applicable to such court, and the proceedings thereof and relating thereto.

14. Provided there be no superior officer of Her Majesty's land forces present in command of a district, garrison, station, or place where marines may be serving, it shall be lawful for any officer of the Royal Marine corps of the degree of a field officer, and holding a commission from the Lord High Admiral, or the Commissioners for executing the office of Lord High Admiral, for that purpose but not otherwise, to convene or assemble a district or garrison court-martial, to be composed as before stated, and for such court to proceed to try any marine or marines below the rank of commissioned officer for any of the offences cognizable by a district or garrison court-martial; but the sentence so awarded by any such court shall not be carried into effect until the senior officer of the Royal Marines in the district, garrison, station, or place, not being a member of the court, shall have confirmed the same: Provided always, that if there be any such superior officer of Her Majesty's land forces present in command of the district, garrison, station, or place where marines may be, in such case it shall be lawful for him to convene or assemble such district or garrison court-martial for the trial of any marine or marines below the rank of a commissioned officer, and for such court-martial to try any such marine or marines in conformity with the provisions of this Act and the Articles of War to be made in pursuance hereof; but the sentence which may be awarded

by any such court which may be convened or assembled by any such superior officer shall not be carried into effect until such superior officer shall have confirmed the same.

15. The president of every court-martial shall be appointed by or under the authority of the officer convening such courts, and shall in no case be the confirming officer, or the officer whose duty it has been to investigate the charges on which the prisoner is to be arraigned, nor, in the case of a general court-martial, under the degree of a field officer, unless where a field officer cannot be had, nor in any case whatsoever under the degree of a captain, save in the case of a detachment general court-martial holden out of Her Majesty's dominions, or of a divisional or detachment court-martial holden on the line of march, or on board a transport ship, convict ship, merchant vessel, or troop ship not in commission, or on any foreign station where a captain cannot be had: Provided always, that in the case of a detachment general court-martial holden out of Her Majesty's dominions the officer convening such court may be the president thereof.

16. In all trials by court-martial, as soon as the president and other officers appointed to serve thereon shall be assembled, their names shall be read over in the hearing of the prisoner, who shall thereupon be asked if he objects to being tried by the president or by any of such officers, and if the prisoner shall then object to the president, such objection, unless disallowed by two thirds at least of the other officers appointed to form the court, shall be referred to the decision of the authority by whom such president shall have been appointed; but if he object to any officer other than the president, such objection shall be decided by the president and the other officers so aforesaid appointed to form the court; and when the place of the president or other officer in respect of whom any challenge shall have been made and allowed shall be supplied by some officer in respect of whom no challenge shall be made or allowed, or if no challenge whatever shall have been made, or, if made, not allowed, the president and the other officers composing a general court-martial shall take the oaths in the schedule to this Act annexed before the judge advocate or his deputy or person officiating as judge advocate, and on trials by other courts-martial before the president of such court, who are hereby respectively authorised to administer the same, and any sworn member may administer the oath to the president; and as soon as the said oaths shall have been administered to the respective members, the president of the court is hereby authorised and required to administer to the judge advocate, or the person officiating as such, the oath in the schedule to this Act annexed; and no proceeding or trial shall be

had upon any offence but between the hours of eight of the clock in the morning and four in the afternoon, except in cases which require an immediate example, and except in the East Indies, where such proceedings or trial may be had between the hours of six in the morning and four in the afternoon.

17. All general and other courts-martial shall have power and authority and are hereby required to administer an oath to every witness or other person who shall be examined before such court in any matter relating to any proceeding before the same; and every person, as well civil as military, who may be required to give or produce evidence before a court-martial, shall, in the case of general courts-martial, be summoned by the judge advocate, or the person officiating as such, and in the case of all other courts-martial by the president of the court; and all persons so summoned and attending as witnesses before any court-martial shall, during their necessary attendance in or on such courts, and in going to and returning from the same, be privileged from arrest, and shall, if unduly arrested, be discharged by the court out of which the writ or process issued by which such witness was arrested; or if such court be not sitting, then by any judge of the superior courts of Westminster or Dublin, or of the Court of Session in Scotland, or of the courts of law in the East or West Indies, or elsewhere, according as the case shall require, upon its being made to appear to such court or judge by any affidavit in a summary way that such witness was arrested in going to, attending upon, or returning from or attending upon such court-martial; and all witnesses so duly summoned as aforesaid who shall not attend on such courts, or attending shall refuse to be sworn, or not produce the documents being under their power or control required to be produced by them, or, being sworn, shall refuse to give evidence or to answer all such questions as the court may legally demand of them, shall be liable to be attached in the Court of Queen's Bench in London or Dublin, or in the Court of Session, sheriff or steward courts in Scotland, or in the courts of law in the East or West Indies, or in any of Her Majesty's colonies, garrisons, or dominions in Europe or elsewhere, respectively, upon complaint made, in like manner as if such witness had, after being duly summoned or subpoenaed, neglected to attend on a trial in any proceeding in the court in which such complaint shall be made: Provided always, that nothing in this Act contained shall be construed to render an oath necessary in any case where by law a solemn affirmation may be made instead thereof.

18. No officer or marine who shall be acquitted or convicted of any offence shall be liable to be tried a second time by the same or any other court-

martial for the same offence; and no finding, opinion, or sentence given by any court-martial, and signed by the president thereof, shall be revised more than once, nor shall any additional evidence in respect of any charge on which the prisoner then stands arraigned be received by the court on any revision.

19. If any person who is or shall be commissioned or in pay as an officer of Royal Marines, or who is or shall be listed or in pay as a non-commissioned officer, drummer, or private man in Her Majesty's Royal Marine forces, shall at any time during the continuance of this Act, while on shore in any place within the said kingdom, or in any other of Her Majesty's dominions, or in any foreign parts out of such dominions, or on board any transport ship, or merchant ship or vessel, or any ship or vessel of Her Majesty, or on board any convict hulk or ship, or any other ship or vessel, or in any place whatever, where or while being in any circumstances in which he shall not be subjected to, or not be liable to or punishable by, the laws relating to the government of Her Majesty's forces by sea, begin, excite, cause, or join in any mutiny or sedition in Her Majesty's marine or other forces, or shall not use his utmost endeavours to suppress any such mutiny or sedition, or shall conspire with any other person to cause a mutiny, or coming to the knowledge of any mutiny or intended mutiny shall not without delay give information thereof to his commanding officer; or shall misbehave himself before the enemy; or shall shamefully abandon or deliver up any garrison, fortress, post, or guard committed to his charge, or which he shall have been commanded to defend; or shall compel the governor or commanding officer of any garrison, fortress, or post to deliver up to the enemy or to abandon the same; or shall speak words or use any other means to induce such governor or commanding officer or any other to misbehave before the enemy, or shamefully to abandon or deliver up any garrison, fortress, post, or guard committed to their respective charge, or which he or they shall be commanded to defend; or shall leave his post before being regularly relieved, or shall sleep on his post; or shall hold correspondence with or give advice or intelligence to any rebel, pirate, or enemy of Her Majesty, either by letters, messages, signs, tokens, or any other ways or means whatever; or shall treat or enter into any terms with any such rebel, pirate, or enemy, without the licence of the Lord High Admiral of the said United Kingdom, or the Commissioners for executing the office of Lord High Admiral aforesaid, for the time being; or shall strike or use or offer any violence against his superior officer being in the execution of his office, or shall disobey any lawful command of his superior officer; or who being confined in a military

prison shall offer any violence against a visitor or other officer being in the execution of his office, or shall violate any law or regulation of or relating to any military prison; or shall desert from Her Majesty's Royal Marine forces; every person so offending in any of the matters before mentioned, whether such offence be committed within this realm, or in any other of Her Majesty's dominions, or in foreign parts upon land or upon the sea, shall suffer death or penal servitude or such other punishment as by a court-martial shall be awarded: Provided always, that any non-commissioned officer or marine in pay in any division or company who shall, without having first obtained a regular discharge therefrom, enlist himself in any other division or company, or in any other branch of Her Majesty's service, may be deemed to have deserted Her Majesty's service and shall be liable to be punished accordingly.

20. In all cases where the punishment of death shall have been awarded by a general court-martial or by a detachment general court-martial, it shall be lawful for Her Majesty, or, if in any place out of the United Kingdom or British Isles, for the commanding officer having authority to confirm the sentence, instead of causing such sentence to be carried into execution, to order the offender to be kept to penal servitude for any term not less than five years, or to suffer such term of imprisonment, with or without hard labour, and with or without solitary confinement, as shall seem meet to Her Majesty or to the officer commanding as aforesaid.

21. Any officer or marine, or any person employed or in any way concerned in the care or distribution of any money, provisions, forage, arms, clothing, ammunition, or other stores belonging to any of Her Majesty's forces or for Her Majesty's use, who shall embezzle, fraudulently misapply, wilfully damage, steal, or receive the same knowing them to have been stolen, or shall be concerned therein or connive thereat, may be tried for the same by a general court-martial, and sentenced to be kept in penal servitude for any term not less than five years, or to suffer such punishment of fine, imprisonment with or without hard labour, dismissal from Her Majesty's service, reduction to the ranks, if a warrant or non-commissioned officer, as such court shall think fit, according to the nature and degree of the offence; and every such offender shall, in addition to any other punishment, make good at his own expense the loss and damage sustained; and in every such case the court is required to ascertain by evidence the amount of such loss or damage, and to declare by their sentence that such amount shall be made good by such offender; and the loss and damage so ascertained as aforesaid shall be a debt to Her

Majesty, and may be recovered in any of Her Majesty's courts at Westminster or in Dublin, or the Court of Exchequer in Scotland, or in any court in Her Majesty's colonies where the person sentenced by such court-martial shall be resident after the said judgment shall be confirmed and made known, or the offender, if he shall remain in the service, may be put under stoppages not exceeding one half of his pay and allowances until the amount so ascertained shall be recovered.

22. Whenever Her Majesty shall intend that any sentence of penal servitude heretofore or hereafter to be passed upon any offender by any court-martial shall be carried into execution for the term specified in such sentence, or for any shorter term, or shall be graciously pleased to commute as aforesaid to penal servitude any sentence of death which shall have been passed by any such court, such sentence, together with Her Majesty's pleasure upon the same, shall be notified in writing by the Lord High Admiral, or by the Secretary to the Admiralty for the time being, to any justice of the Queen's Bench, Common Pleas, or baron of the Exchequer, and thereupon such justice or baron shall make an order for the penal servitude of such offender upon the terms and for the time which shall be specified in such notification, and shall do all such other acts consequent upon such notification as any such justice or baron is authorised to make or do by any statute or statutes in force at the time of making any such orders in relation to penal servitude of offenders; and such order, and other acts to be so made and done as aforesaid, shall be obeyed and executed by such person in whose custody such offender shall at that time be, and by all other persons whom it may concern, and shall be as effectual, and have all the same consequences, as any order made under the authority of any statute with respect to any offender in such statute mentioned; and every sheriff, gaoler, keeper, governor, or superintendent whom it may concern, and all constables and other persons, shall be bound to obey the aforesaid order and orders, be assistant in the execution thereof, and be liable to the same punishment for disobedience to or for interrupting the execution of such order, as they would be if the same had been made under the authority of any such Act of Parliament; and every person so ordered to be kept in penal servitude shall be subject respectively to all and every the penalties and provisions made by law and in force concerning persons under sentence of penal servitude, or receiving Her Majesty's pardon on condition of penal servitude; and from the time when such order of penal servitude shall be made every law and statute in force touching the escape of felons, or their afterwards returning or being at large without

leave, shall apply to such offender, and to all persons aiding, abetting, contriving, or assisting in any escape or intended escape or the returning without leave of any such offender; and the judge who shall make any order of penal servitude as aforesaid shall direct the notification of Her Majesty's pleasure, and his own order made thereupon, to be filed and kept of record in the office of the Clerk of the Crown of the Court of Queen's Bench; and the said clerk shall have a fee of two shillings and sixpence only for filing the same, and shall, on application, deliver a certificate in writing (not taking more than two shillings and sixpence for the same) to such offender, or to any person applying in his or Her Majesty's behalf, showing the Christian and surname of such offender, his offence, the place where the court was held before which he was convicted, the sentence, and the conditions on which the order of penal servitude was made; which certificate shall be sufficient proof of the conviction and of the sentence of such offender, and also of the terms in which such order for his penal servitude was made, in any court and in any proceeding wherein it may be necessary to inquire into the same; and it shall be lawful for any judge of the Queen's Bench, Common Pleas, or Exchequer in Ireland to make an order that any such offender convicted in Ireland shall be kept in penal servitude in England, and such order shall be in all respects as effectual in England as though such offender had been convicted in England and the order had been made by any judge of the Queen's Bench, Common Pleas, or Exchequer in England.

23. Whenever any sentence of penal servitude heretofore or hereafter passed upon any offender by any court-martial holden in any part of Her Majesty's foreign dominions, or elsewhere beyond the seas, is to be carried into execution for the term specified in such sentence, or for any shorter term, or when sentence of death passed by any such court-martial has been or shall as aforesaid be commuted to penal servitude, the same shall be notified by the officer commanding Her Majesty's forces at the presidency or station where the offender may come or be, if in India to the chief judge or any judge of the chief civil court of the presidency or province in which the court-martial has been held; and if in any other part of Her Majesty's foreign dominions, to the chief justice or some other judge therein, who shall make order for the penal servitude or intermediate custody of such offender; and upon any such order being made it shall be duly notified to the governor of the presidency if in the East Indies, or to the governor of the colony if in any of Her Majesty's colonies, or to the person who shall for the time being be exercising the office of governor of such presidency or colony, who on

receipt of such notification shall cause such offender to be removed or sent to some other colony or place, or to undergo his sentence within the presidency or colony where the offender was so sentenced or where he may come or be as aforesaid in obedience to the directions for the removal and treatment of convicts which shall from time to time be transmitted from Her Majesty through one of Her Principal Secretaries of State to such presidency or colony; and such offender shall, according to such directions, undergo the sentence of penal servitude which shall have been passed upon him either in the presidency or colony in which he has been so sentenced or in the colony or place to which he has been so removed or sent, and whilst such sentence shall remain in force shall be liable to be imprisoned and kept to hard labour, and otherwise dealt with under such sentence, in the same manner as if he had been sentenced to be imprisoned with hard labour during the term of his penal servitude by the judgment of a court of competent jurisdiction in such presidency or colony or in the colony or place to which he has been so removed or sent respectively.

24. In any case where a sentence of penal servitude shall have been awarded by a general or detachment general court-martial, it shall be lawful for Her Majesty, or, if in any place out of the United Kingdom or British Isles, for the officer commanding in chief Her Majesty's forces there serving, instead of causing such sentence to be carried into execution, to order that the offender be imprisoned, with or without hard labour, and with or without solitary confinement, for such term not exceeding two years as shall seem meet to Her Majesty or to the officer commanding as aforesaid.

25. Where an award of any forfeiture, or of deprivation of pay, or of stoppages of pay shall have been added to any sentence of penal servitude, it shall be lawful for the said Lord High Admiral or the said Commissioners, or, if in any place out of the United Kingdom or British Isles, for the officer commanding in chief Her Majesty's forces there serving, in the event of the sentence being commuted for imprisonment, to order such award of forfeiture, deprivation of pay, or stoppages of pay to be enforced, mitigated, or remitted as may be deemed expedient.

26. When any sentence of death shall be commuted for penal servitude, or when any marine shall by court-martial be adjudged to penal servitude as authorised by this Act, it shall be lawful for the commanding officer of the division to which such marine shall have belonged or may belong to cause him to be detained and conveyed to any gaol or prison, there to remain in safe

custody until he shall be removed therefrom by due authority under an order for his penal servitude to be made by some justice of the Queen's Bench or Common Pleas or baron of the Exchequer as aforesaid; and a certificate of his sentence, after the same shall have been approved by the Lord High Admiral, or the Commissioners for executing the office of Lord High Admiral, (such certificate to be signed by the commanding officer of the division from which he shall be sent,) shall be a sufficient order, requisition, and authority to the governor, keeper, or superintendent of the gaol or prison to receive and detain him: Provided always, that in case of any such offender being so conveyed to gaol or prison the usual allowance of sixpence per diem, or such other sum as the said Lord High Admiral or the said Commissioners may at any time or times direct, shall be made to the keeper of the gaol or prison for the subsistence of such offender during his detention therein, which allowance shall be paid by the paymaster of the division, upon production to him, by the said governor, keeper, or superintendent, of a declaration, to be made by him before one of Her Majesty's justices of the peace of such county, of the number of days during which the offender shall have been so detained and subsisted in such gaol or prison.

27. No court-martial shall, for any offence whatever committed in time of peace within the Queen's dominions, have power to sentence any marine to corporal punishment: Provided, that any court-martial may sentence any marine to corporal punishment while on active service in the field, or on board any ship not in commission, for mutiny, insubordination, desertion, drunkenness on duty or on the line of march; and no sentence of corporal punishment shall exceed fifty lashes.

28. It shall be lawful for any general, district, or garrison court-martial to award imprisonment, with or without hard labour, and with or without solitary confinement, such confinement not exceeding the periods prescribed herein-after or by the Articles of War, and in case of a marine in addition to corporal punishment.

29. In all cases in which corporal punishment shall form the whole or part of the sentence awarded by any court-martial, it shall be lawful for the Lord High Admiral of the United Kingdom of Great Britain and Ireland, or the Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, or for the officer authorised to confirm the sentences of courts-martial, to commute such corporal punishment to imprisonment for any period not exceeding forty-two days, with or

without hard labour, and with or without solitary confinement, or to mitigate such sentence, or instead of such sentence to award imprisonment for any period not exceeding twenty days, with or without hard labour, and with or without solitary confinement, and corporal punishment, to be inflicted in the prison, not exceeding twenty-five lashes, and the solitary confinement herein-before mentioned shall in no case exceed seven days at a time, with intervals of not less than seven days between each period of such confinement.

30. It shall be lawful for Her Majesty, in all cases whatsoever, instead of causing a sentence of cashiering to be put in execution, to order the offender to be reprimanded, or, in addition thereto, to suffer such loss of army or regimental rank, or both, as may be deemed expedient.

31. Any general court-martial may, in addition to any other punishment which such court may award, sentence any offender to forfeiture of all advantage as to additional pay, good-conduct pay, and to pension on discharge, which might have otherwise accrued from the length of his former service, or to forfeiture of such advantage absolutely, whether it might have accrued from past service, or might accrue from future service, or to forfeiture of any annuity and medal which may have been granted for former meritorious service, or of the gratuity and medal awarded for former good conduct, and of all medals and decorations, according to the nature of the case; and any district or garrison court-martial may also, in addition to any punishment which such court may award, sentence any offender to such forfeiture for desertion, or for disgraceful conduct,

In wilfully maiming or injuring himself or any other marine, whether at the instance of such other marine or not, or of causing himself to be maimed or injured by any other person, with intent thereby to render himself or such other marine unfit for service:

In wilfully doing any act, or wilfully disobeying any orders, whether in hospital or otherwise, thereby producing or aggravating disease or infirmity, or delaying his cure:

In malingering or feigning disease:

In tampering with his eyes, with intent thereby to render himself unfit for service:

In stealing or embezzling Government property or stores, or in receiving the same knowing the same to have been stolen:

In stealing any money or goods the property of a comrade, of a marine officer, or of any marine mess or band, or in receiving any such money or goods knowing the same to have been stolen:

In making any false or fraudulent accounts, returns, matters, or entries, or assisting or

conniving at the same being made, or producing the same as true, knowing the same to be false or fraudulent :

In stealing or embezzling, or fraudulently misapplying public money intrusted to him :

Or in committing any other offence of a felonious or fraudulent nature, to the injury of, or with intent to injure, any person, civil, marine, or military :

Or for any other disgraceful conduct, being of a cruel, indecent, or unnatural kind.

32. Every marine who shall be found guilty by a court-martial of desertion, of wilfully maiming or injuring himself or any other marine, whether at the instance of such other marine or not, or of causing himself to be maimed or injured by any other person, with intent thereby to render himself or such other marine unfit for service, of tampering with his eyes with intent thereby to render himself unfit for service, such finding having been confirmed, or found guilty by a jury of felony in any court of ordinary criminal jurisdiction in England or Ireland, or of any crime or offence in any court of criminal judicature in any part of the United Kingdom, or in any dominion, territory, colony, settlement, or island belonging to or occupied by Her Majesty out of the United Kingdom, which would, if committed in England, amount to felony, shall thereupon forfeit all advantage as to additional pay, good-conduct pay, and to pension on discharge which might have otherwise accrued from the length of his former service, in addition to any punishment which such court may award ; and every marine who may be so convicted, or who may be sentenced to penal servitude, or discharged with ignominy, shall thereupon likewise forfeit all medals which he may be in possession of, whether for sea or field service or for good conduct, together with any annuity or pension or gratuity, if any, thereto appertaining ; and any sergeant reduced to the ranks by sentence of court-martial may, by the order of the same court, be made to forfeit any annuity or pension and medal for meritorious service, or any or either of them, which may have been conferred upon him.

33. If any non-commissioned officer or marine, by reason of his imprisonment, whether under sentence of a court-martial or of any other court duly authorised to pass such sentence, or by reason of his confinement for debt, or by reason of his desertion, or, being an apprentice, by reason of his being allowed to serve out his time with his master, shall have been absent from his duty during any portion of the time limited by his enlistment or re-engagement or prolongation of service, as herein-after provided, such portion of his time shall not be reckoned as a part of the limited service for which such non-commissioned

officer or marine was enlisted or re-engaged, or for which his time of service may have been prolonged ; and no marine shall be entitled to pay, or to reckon service towards pay or pension, when in confinement under a sentence of any court, or during any absence from duty by commitment or confinement as a deserter by confession or under any charge of which he shall be afterwards convicted, either by court-martial or by any court of ordinary criminal jurisdiction, or whilst in confinement for debt ; and when any marine shall be absent as a prisoner of war he shall not be entitled to pay, or to reckon service towards pay or pension, for the period of such absence, but upon rejoining Her Majesty's service due inquiry shall be made by a court-martial, and unless it shall be proved to the satisfaction of such court that the said marine was taken prisoner through wilful neglect of duty on his part, or that he had served with or under, or in some manner aided, the enemy, or that he had not returned as soon as possible to Her Majesty's service, he may thereupon be recommended by such court to receive either the whole of such arrears of pay, or a proportion thereof, and to reckon service during his absence ; and any marine who shall be convicted of desertion, or of absence without leave, shall, in addition to any punishment awarded by the court, forfeit his pay for the day or days during which he was in a state of desertion, or during his absence without leave ; and if any marine shall absent himself without leave for any period, and shall not account for the same to the satisfaction of the commanding officer, or if any marine shall be guilty of any other offence which the commanding officer may not think necessary to bring before a court-martial, the commanding officer may, in addition to any minor punishment he is authorised to award, order that such marine shall be imprisoned for such period not exceeding one hundred and sixty-eight hours, with or without hard labour, and with or without solitary confinement, as the said commanding officer may think fit, and such marine shall forfeit his pay for any day or days on which he may be so imprisoned ; and the said commanding officer may moreover order that, in addition to or instead of such imprisonment and forfeiture, or any other punishment which he has authority to inflict, any marine who shall have so absented himself as aforesaid shall forfeit his pay for the day or days during which he shall have so absented himself ; and, in pursuance of any such order as aforesaid, the pay of the marine shall be accordingly forfeited : Provided always, that such marine shall not be liable to be afterwards tried by a court-martial for any offence for which he shall have been so punished, ordered to suffer imprisonment, punishment, or forfeiture as last aforesaid : Provided also, that any marine who shall be so ordered to



suffer imprisonment or forfeiture of pay shall, if he so request, have a right to be tried by a court-martial for his offence, instead of submitting to such imprisonment or forfeiture: Provided also, that it shall be lawful for the said Lord High Admiral or the said Commissioners to order or withhold the payment of the whole or any part of the pay of any officer or marine during the period of absence by any of the causes aforesaid.

34. In addition to any other punishment which the court may award, a court-martial may further direct that any offender may be put under stoppages until he shall have made good—

Any bounty fraudulently obtained by him by desertion from his corps and enlisting in some other corps or in the militia:

Any loss, disposal of, or damage occasioned by him in any of the instances of disgraceful conduct herein specified:

Any loss, disposal of, or destruction of, or damage or injury to any property whatsoever, occasioned by his wilful or negligent misconduct:

Any loss, disposal of, or destruction of, or damage or injury to his arms, clothing, instruments, equipments, accoutrements, or necessities, or any extra article of clothing or equipment that he may have been put in possession of and ordered to wear on the recommendation of the surgeon for the benefit of his health, or making away with or pawning any medal or decoration for service or for general good conduct, which may have been granted to him by order of Her Majesty or by order of the East India Company, or any medal or decoration which may have been granted to him by any foreign power, or any loss, disposal of, or destruction of, or damage or injury to the arms, clothing, instruments, equipments, accoutrements, or necessities of any officer or marine, occasioned by his wilful or negligent misconduct:

Any expense necessarily incurred by his drunkenness or other misconduct:

Provided always, that, except in the case of the loss, disposal of, or destruction of, or damage or injury to arms, clothing, instruments, equipments, accoutrements, or necessities, in which case the court may by its sentence direct that the said stoppages shall continue till the cost of replacing or repairing the same be made good, the amount of any loss, disposal, destruction, damage or injury, or expense, shall be ascertained by evidence, and the offender shall be placed under stoppages for such an amount only as shall be proved to the satisfaction of the court: Provided also, that when an offender is put under stoppages for making away with or pawning any

medal or decoration, the amount shall be credited to the public, but the medal or decoration in question shall not be replaced, except under special circumstances, to be determined by the Lord High Admiral or the Commissioners for executing the office of Lord High Admiral aforesaid: Provided also, that so much only of the pay of the marine may be stopped and applied as shall, after satisfying the charges for messing and washing, leave him a residue at the least of one penny a day.

35. Whenever any marine shall have been convicted of desertion or of any such disgraceful conduct as is herein-before described, and the court in respect of such disgraceful conduct shall have made the forfeiture of all claim to pension on discharge a part of the sentence passed on such marine, such court may further sentence him to be discharged with ignominy from Her Majesty's service: Provided always, where an award of any of the forfeitures herein-before mentioned, or of deprivation of pay, or of stoppages of pay, shall have been added to a sentence of transportation or penal servitude, it shall be lawful for the Lord High Admiral or the Commissioners for executing the office of Lord High Admiral, or, if in the East Indies, for the officer commanding in chief Her Majesty's land forces in India, in the event of the sentence of transportation or penal servitude being commuted to imprisonment, to order such award of forfeiture, deprivation of pay, or stoppages of pay to be enforced, mitigated, or remitted as may be deemed expedient.

36. On the first and on every subsequent conviction for desertion the court-martial, in addition to any other punishment, may order the offender to be marked, two inches below and one inch in rear of the nipple of the left breast, with the letter D, such letter not to be less than an inch long, and to be marked upon the skin with some ink or gunpowder or other preparation, so as to be clearly seen and not liable to be obliterated; a court-martial may, upon sentencing any offender to be discharged with ignominy, also sentence him to be marked on the right breast with the letters B. C., and the confirming officer may order such sentence in respect of the marking to be carried into effect.

37. A general or district or garrison court-martial may sentence any marine to imprisonment, with or without hard labour, and may also direct that such offender shall be kept in solitary confinement for any portion or portions of such imprisonment, in no case exceeding fourteen days at a time, nor eighty-four days in any one year, with intervals between the periods of solitary confinement of not less duration than such

periods; and when the imprisonment awarded shall exceed three months, the court-martial shall imperatively order that the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods; and any divisional or detachment court-martial may sentence any marine to imprisonment, with or without hard labour, for any period not exceeding forty-two days, and may also direct that such marine be kept in solitary confinement for any portion or portions of such imprisonment, not exceeding fourteen days at a time, with intervals between them of not less duration than such periods of solitary confinement: Provided always, that when any court-martial, whether general, garrison, or district, or divisional or detachment, shall direct that the imprisonment shall be solitary confinement only, or when any sentence of corporal punishment shall have been commuted to imprisonment only, the period of such solitary confinement shall in no case exceed fourteen days.

38. Whenever sentence shall be passed by a court-martial on an offender already under sentence, either of imprisonment or of penal servitude, the court may award sentence of imprisonment or penal servitude for the offence for which he is under trial to commence at the expiration of the imprisonment or penal servitude to which he shall have been so previously sentenced, although the aggregate of the terms of imprisonment or penal servitude respectively may exceed the term for which either of those punishments could be otherwise awarded.

Whenever Her Majesty, the Lords Commissioners of the Admiralty, or any general or other officer authorised to confirm the sentences of courts-martial shall commute a sentence of penal servitude or corporal punishment to imprisonment, and the offender whose sentence shall be so commuted shall at the time of such commutation be under sentence of imprisonment or penal servitude, it shall be lawful to direct that such commuted sentence of imprisonment shall commence at the expiration of the imprisonment or penal servitude to which such prisoner shall have been so previously sentenced, although the aggregate of the term of imprisonment or penal servitude respectively may exceed the term for which either of those punishments could be otherwise awarded.

39. Save as herein specially provided, every term of penal servitude or imprisonment under the sentence of a court-martial, whether original or revised, shall be reckoned as commencing on the day on which the original sentence and proceedings shall be signed by the president; and

the place of imprisonment under the sentences of courts-martial shall be appointed by the court or the Lord High Admiral, or the Commissioners for executing the office of Lord High Admiral, or the commanding officer of the division to which the offender belongs or is attached, or the officer commanding the district, garrison, island, or colony.

40. In the case of a prisoner undergoing imprisonment under sentence of a court-martial, or as part of commuted punishment, in any public prison other than a military prison, or in any gaol or house of correction or elsewhere, in any part of the United Kingdom, it shall be lawful for the said Lord High Admiral, or the Commissioners for executing the office of Lord High Admiral, for the time being, in all cases, or for the officer who confirmed the proceedings of the court, or the officer commanding the division or the district or garrison in which such prisoner may be, to give, as often as occasion may arise, an order in writing directing that the prisoner be discharged, or be delivered over to military custody, whether for the purpose of being removed to some other prison or place in the United Kingdom, there to undergo the remainder or any part of his sentence, or for the purpose of being brought before a court-martial either as a witness or for trial; and in the case of a prisoner undergoing imprisonment under the sentence of a court-martial in any public prison other than a military prison, or in any gaol or house of correction, in any part of Her Majesty's dominions other than the United Kingdom, it shall be lawful for the said Lord High Admiral or the said Commissioners, or for the officer commanding the Royal Marines there serving, in the case of any such prisoner, to give, as often as occasion may arise, an order in writing directing that the prisoner be discharged, or be delivered over to military or other custody, whether for the purpose of being removed to some other prison or place in any part of Her Majesty's dominions, there to undergo the remainder or any part of his sentence, or for the purpose of being brought before a court-martial either as a witness or for trial; and in the case of any prisoner who shall be removed by any such order from any such prison, gaol, or house of correction, either within the United Kingdom or elsewhere, to some other prison or place, either in the United Kingdom or elsewhere, the officer or authorities who gave such order shall also give an order in writing directing the governor, provost marshal, gaoler, or keeper of such other prison or place to receive such prisoner into his custody, and specifying the offence of which such prisoner shall have been convicted, and the sentence of the court, and the period of imprisonment which he is to undergo, and the day and the hour on which he is to be released; and such governor,

provost marshal, gaoler, or keeper shall keep such offender in a proper place of confinement, with or without hard labour, and with or without solitary confinement, according to the sentence of the court, and during the time specified in the said order, or until he be duly discharged or delivered over to other custody before the expiration of that time under an order duly made for that purpose; and in the case of a prisoner undergoing imprisonment under the sentence of a court-martial in any military prison in any part of Her Majesty's dominions, the Secretary of State for War, or the general officer commanding the district or station in which the prison may be situated, shall have the like powers in regard to the discharge and delivery over of such prisoners to military or other custody as may be lawfully exercised by any of the authorities above mentioned in respect of any prisoners undergoing confinement as aforesaid in any public prison other than a military prison, or in any gaol or house of correction in any part of Her Majesty's dominions; and such prisoner in any of the cases herein-before mentioned shall accordingly, on the production of any such order as is herein-before mentioned, be discharged or delivered over, as the case may be: Provided always, that the time during which any prisoner under sentence of imprisonment by a court-martial shall be detained in such military or other custody under such order as aforesaid shall be reckoned as imprisonment under the sentence, for whatever purpose such detention shall take place, and such prisoner may during such time, either when on board ship or otherwise, be subjected to such restraint as is necessary for his detention and removal.

41. Every governor, provost marshal, gaoler, or keeper of any public prison, or of any gaol or house of correction, in any part of Her Majesty's dominions, shall receive into his custody any military offender under sentence of imprisonment by a general or other court-martial, upon delivery to him of an order in writing in that behalf from the Lord High Admiral, or the Commissioners for executing the office of Lord High Admiral, or from the officer commanding the division or detachment to which the offender belongs or did last belong or is attached, which order shall specify the period of imprisonment or remainder of imprisonment which the offender is to undergo, and the day and hour of the day on which he is to be released or be otherwise disposed of; and such governor, provost marshal, gaoler, or keeper shall keep such offender in a proper place of confinement, with or without hard labour, and with or without solitary confinement, according to the sentence of the court, and during the time specified in the said order, or until he be discharged or delivered over to other custody before the expiration of that time, under an order duly made

for that purpose; and whenever marines are called out in aid of the civil power, or are stationed in billets, or are on the line of march, every governor, provost marshal, gaoler, or keeper of any public prison, gaol, house of correction, lock-up house, or other place of confinement, shall receive into his custody any marine for a period not exceeding seven days, upon delivery to him of an order in writing in that behalf from the officer commanding such marine; and any governor, provost marshal, gaoler, or keeper of any public prison, gaol, house of correction, lock-up house, or other place of confinement who shall refuse to receive and to confine, or to discharge or deliver over, any marine offender in the manner herein prescribed, shall forfeit for every such offence the sum of one hundred pounds.

42. The gaoler or keeper of any public prison, gaol, house of correction, lock-up house, or other place of confinement in any part of Her Majesty's dominions shall diet and supply every marine imprisoned therein under the sentence of a court-martial or as a deserter with fuel and other necessaries according to the regulations of such place of confinement, and shall receive on account of every marine during the period of his imprisonment one shilling per diem, or such other sum as the said Lord High Admiral or the said Commissioners may at any time or times direct, which the Secretary of the Admiralty shall cause to be issued out of the subsistence of such marine, upon application in writing signed by any justice within whose jurisdiction such place of confinement shall be locally situated, together with a copy of the order of commitment, and which sum of sixpence per diem, or such other sum as aforesaid, shall be carried to the credit of the fund from which the expense of such place of confinement is defrayed.

43. Every gaoler or keeper of any public prison, gaol, house of correction, or other place of confinement, to whom any notice shall have been given, or who shall have reason to know or believe, that any person in his custody for any debt or contempt, or upon any charge or for any offence, civil, criminal, or military, is a marine, shall on receiving him into custody give notice thereof to the Secretary of the Admiralty, and also, previous to the expiration of the period of the confinement or imprisonment of such marine, give to the Secretary of the Admiralty one month's notice of the period of such expiration of confinement or imprisonment, or if there shall not be sufficient time for a month's notice, then the longest practicable notice thereof, specifying the day and hour of the day on and at which he is to be released; and for every default of giving either or any of such notices such gaoler or person shall forfeit the sum of twenty pounds; and moreover

every gaoler or other person having such immediate inspection as aforesaid shall, as soon as any such marine shall be entitled to be discharged out of custody, with all convenient speed, safely and securely conduct and convey and safely and securely deliver every such marine either unto the officer commanding at the nearest head quarters of the Royal Marines or to the officer commanding Her Majesty's ship to which any such marine may happen to belong, unless the said Commissioners shall, by writing under the hand of the Secretary of the Admiralty, or the officer commanding at the nearest head quarters of the Royal Marines, or the officer commanding Her Majesty's ship to which any such marine may belong, shall, by writing under his hand, direct that such marine be delivered to some other officer or person, in which case he shall be delivered to such other officer or person accordingly, and the officer or person to whom such marine shall be so delivered in accordance with this Act shall thereupon give to such gaoler or person delivering up such marine a certificate, directed to the Secretary of the Admiralty, specifying the receipt of such marine, and, if such gaoler or other person as aforesaid has conducted or conveyed any such marine, specifying the place from and to which he shall have been conducted and conveyed as aforesaid; and such gaoler or person who shall have so conducted, conveyed, and delivered any such marine shall, upon the production of such certificate, be entitled to receive of and from the Accountant General of Her Majesty's Navy the sum of one shilling per mile, and no more, for conducting, conveying, and delivering any such marine as aforesaid; and every such gaoler or other person having such immediate inspection as aforesaid who shall not safely and securely conduct, convey, or deliver any such marine as aforesaid shall for every such misconduct or offence forfeit and pay the sum of one hundred pounds. In all cases where the marine in custody is under sentence to be discharged from the service on the completion of his term of imprisonment, and the discharge document is in the hands of the gaoler, such gaoler shall not be required to make any report thereof to the Secretary of the Admiralty or to the Deputy Adjutant General of Marines.

44. Every military prison which shall be established under or by virtue of any Act for punishing mutiny and desertion, and for the better payment of the army and their quarters, shall be deemed to be public prisons within the meaning of any Act now in force or hereafter to be in force for the regulation of Her Majesty's Royal Marine forces; and any officer or marine convicted by a court-martial may be sent, by order of the Commissioners for executing the office of Lord High Admiral, to any such military prison, there to

undergo such punishment as may be awarded by the sentence passed upon him, or until he be discharged or delivered up by an order, as in the case of a discharge or removal from any other prison under this Act.

45. Musters, as have been customary, shall be taken of every division or company of Royal Marines once in every calendar month, as shall be appointed; and no officer or marine shall be absent from any such muster, unless duly certified to be employed on some other duty of the corps, or sick, or in prison, or on furlough; and every person belonging to Her Majesty's service who shall give or procure to be given any untrue certificate thereby to excuse any person from any muster or other service which he ought to attend or perform, or shall make any false or untrue muster of man or horse, or who shall willingly allow or sign any false muster or duplicate thereof, or shall directly or indirectly take or receive any money or gratuity for mustering any person, or for signing any muster roll or duplicate, or shall knowingly muster any person by a wrong name, shall, upon proof by two witnesses before a general court-martial, for any such offence be sentenced to be cashiered: Provided that it shall be lawful for Her Majesty, in all cases whatsoever, instead of causing a sentence of cashiering to be put in execution, to order the offender to be reprimanded, or, in addition thereto, to suffer such loss of rank as may be deemed expedient; and any person who shall fraudulently offer or procure himself to be falsely mustered, or lend or furnish any horse to be falsely mustered, shall, upon proof thereof by the oaths of two witnesses before some justice of the peace residing near to the place where such muster shall be made, forfeit the sum of twenty pounds, and the informer, if he belongs to Her Majesty's service, shall, if he demand it, be forthwith discharged; and if any person not belonging to Her Majesty's service shall give or sign any untrue certificate of illness or otherwise in order to excuse any officer or marine from appearance at any muster, or whereby Her Majesty's service may be defrauded, every person so offending shall for every such offence forfeit the sum of fifty pounds.

46. All muster rolls and pay lists of Royal Marines required to be verified upon oath shall be sworn before and attested by any justice of the peace, without fee or reward to himself or his clerk.

47. Every marine shall be liable to be tried and punished for desertion from any corps into which he may have unlawfully enlisted, although he may of right belong to another corps, and be a deserter therefrom; and whether such marine shall be tried for deserting from the corps to which he may of right belong, or from the corps

into which he may have unlawfully enlisted, or for any other desertion, every desertion previous or subsequent to that for which he may at the time be taking his trial may, if duly stated in the charges, be given in evidence against him on such trial.

48. Upon reasonable suspicion that a person is a deserter it shall be lawful for any constable, or if no constable can be immediately met with, then for any officer or marine or soldier in Her Majesty's service, or other person, to apprehend or cause to be apprehended such suspected person, and forthwith to bring him or cause him to be brought before any justice living in or near the place where he was so apprehended, and acting for the county, city, district, place, or borough wherein such place is situate, or for the county adjoining such first-mentioned county or such borough; and such justice is hereby authorised and required to inquire whether such suspected person is a deserter, and from time to time to defer the said inquiry, and to remand the said suspected person, in the manner prescribed by an Act passed in the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-two, section twenty-one, and subject to every provision therein contained; and if it shall appear to the satisfaction of such justice, by the testimony of one or more witnesses taken upon oath, or by the confession of such suspected person, confirmed by some corroborative evidence upon oath, or by the knowledge of such justice, that such suspected person is a deserter, such justice shall forthwith cause him to be conveyed in civil custody to the head quarters or depôt of the division to which he belongs, if stationed within a convenient and easily accessible distance from the place of commitment, or if not so stationed then to the nearest or most convenient public prison (other than a military prison) or police station legally provided as the lock-up house for temporary confinement of persons taken into custody, whether such prison or police station be in the county or borough in which such suspected person was apprehended or in which he was committed, or not; or if the deserter has been apprehended by a party of marines in charge of a commissioned officer, such justice may deliver him up to such party, unless the officer shall deem it necessary to have the deserter committed to prison for safe custody; and such justice shall transmit an account of the proceedings, in the form prescribed in the schedule annexed to this Act, to the Secretary of the Admiralty, specifying thereon whether such deserter was delivered to a party of marines in order to his being taken to the head quarters or depôt of his division, or whether such deserter was committed to prison, to the end that the person so committed may be removed by an order from the said Lord High

Admiral, or the said Commissioners for executing the office of Lord High Admiral, or deputy adjutant general of Royal Marines, and proceeded against according to law; and such justice shall also send to the Secretary of the Admiralty a report stating the names of the persons by whom or by or through whose means the deserter was apprehended and secured, and the Secretary of the Admiralty shall transmit to such justice an order upon the proper department for the payment of the sum of twenty shillings as a reward to the person so certified to be entitled thereto; and for such information, commitment, and report as aforesaid the clerk of the said justice shall be entitled to a fee of two shillings and no more; and every gaoler and other person into whose custody any person charged with desertion is committed shall, immediately upon the receipt of the person so charged into his custody, pay such fee of two shillings, and also, upon the production of a receipt from the medical practitioner who may have been required to examine such suspected person, a fee of two shillings and sixpence, and shall notify the fact to the Secretary of the Admiralty, and transmit also to the Secretary of the Admiralty a copy of the commitment, to the end that the Secretary of the Admiralty may order repayment of such fees; and that when any such person shall be apprehended and committed as a deserter in any part of Her Majesty's foreign dominions, the justice shall forthwith cause him to be conveyed to some public prison, if the detachment to which he is suspected to belong shall not be in such part, or if the detachment be in such part, the justice may deliver him into custody at the nearest military post, although the detachment to which such person is suspected to belong may not be stationed at such military post, if within reasonable distance; and such justice shall in every case transmit to the officer commanding a description return in the form prescribed in the schedule to this Act annexed, to the end that such person may be removed by the order of such officer, and proceeded against according to law; and such description return, purporting to be duly made and subscribed in accordance with the Act, shall, in the absence of proof to the contrary, be deemed sufficient evidence of the facts and matters therein stated: Provided always, that any such person so committed as a deserter in any part of Her Majesty's dominions shall, subject to the provisions herein-after contained, be liable to be transferred, by order of the colonel commandant or other officer commanding, to serve in any division, corps, detachment, or party nearest to the place where he shall have been apprehended, or to any other division, corps, detachment, or party to which the Lord High Admiral or the Commissioners for executing the office of Lord High Admiral may deem it desirable that he

should be transferred, and shall also be liable after such transfer of service to be tried and punished as a deserter.

49. For and in respect of any marine attempting to desert from any head quarters, the party or parties by whom he shall be apprehended shall be entitled to a reward of ten shillings, to be paid upon the delivering up of such marine, which sum of ten shillings shall be charged against and stopped and retained out of the pay and subsistence of every such marine.

50. Every gaoler or keeper of any public prison, gaol, house of correction, lock-up house, or other place of confinement in any part of Her Majesty's dominions is hereby required to receive and confine therein every deserter who shall be delivered into his custody by any marine or other person conveying such deserter under lawful authority, on production of the warrant of the justice of the peace on which such deserter shall have been taken, or some order from the Admiralty, which order shall continue in force until the deserter shall have arrived at his destination; and such gaoler or keeper shall be entitled to one shilling for the safe custody of the said deserter while halted on the march, and to such subsistence for his maintenance as shall be directed by the said Lord High Admiral or the said Commissioners.

51. Any person who, while serving in Her Majesty's Navy or in any of Her Majesty's forces, or the embodied militia, shall to any officer, or subordinate, warrant, petty, or non-commissioned officer, fraudulently confess himself to be a deserter from Her Majesty's Royal Marine forces, shall be liable to be tried by any court-martial under this Act, and punished according to the sentence thereof; and any person who shall voluntarily deliver himself up as and confess himself to be a deserter from Her Majesty's Royal Marine forces, or who, upon being apprehended for any offence, shall in the presence of the justice confess himself to be a deserter as aforesaid, shall be deemed to have been duly enlisted and to be a marine, and shall be liable to serve in Her Majesty's Royal Marine forces, whether such person shall have been ever actually enlisted as a marine or not; or in case such person shall not be a deserter from the Royal Marine forces, or shall have been discharged therefrom or from any other corps for any cause whatever, or shall be incapable of service, he shall, on conviction thereof before two justices of the peace at or near the place where he shall deliver himself up or confess, or where he may at any time happen to be, be adjudged to be punished, if in England, as a rogue and vagabond, and if elsewhere by commitment to some prison or house

of correction, there to be kept to hard labour for any time not exceeding three months, or shall be deemed guilty of obtaining money under false pretences within the true intent and meaning, if in England or Ireland, of an Act passed in the session holden in the twenty-fourth and twenty-fifth years of Queen Victoria, intituled "An Act to consolidate and amend the Statute Law of England and Ireland relating to Larceny and other similar offences," or, if in Scotland, shall be deemed guilty of falsehood, fraud, and wilful imposition; and every person so deemed to be guilty of obtaining money under false pretences, or of falsehood, fraud, and wilful imposition, (as the case may be,) shall be liable to be proceeded against and punished accordingly; and the confession and receiving subsistence as a marine by such person shall be evidence of the false pretence, or of the falsehood, fraud, and imposition, (as the case may be,) and of the obtaining money to the amount of the value of such subsistence, and the value of such subsistence so obtained may be charged in the indictment as so much money received by such person; and in case such person shall have been previously convicted of the like offence, or shall have been summarily convicted and punished in England as a rogue and vagabond, or in Scotland or Ireland by commitment, for making a fraudulent confession of desertion, such former conviction may be alleged in the indictment, and may be proved upon the trial of such person; and in such indictment for a second offence it shall be sufficient to state that the offender was at a certain time and place convicted of obtaining money under false pretences as a deserter, for making a fraudulent confession of desertion, without otherwise describing the said offence; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction of the former offence, purporting to be signed by the clerk of the court or other officer having the custody of the record of the court where the offender was first convicted, or by the deputy of such clerk, or by the clerk of the convicting magistrates, shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed such certificate; and if the person so confessing himself to be a deserter shall be serving at the time in Her Majesty's Royal Marine forces he shall be deemed to be and shall be dealt with by all justices and gaolers as a deserter.

52. Any person who shall, in any part of Her Majesty's dominions, by any means whatsoever, directly or indirectly procure any marine to desert or absent himself from his duty without leave from his commanding officer, or attempt to procure or persuade any marine to desert or absent

himself from his duty, and any person who, knowing that any marine is absent from his duty without leave from his commanding officer, shall harbour or conceal such marine, or aid or assist such marine in concealing himself, or aid and assist in his rescue, or aid or assist him to desert, shall be deemed guilty of a misdemeanor, and shall, on conviction thereof before any two justices acting for the county, district, city, burgh, or place where any such offender shall at any time happen to be, be liable to be committed to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for such term not exceeding six calendar months as the convicting justices shall think fit.

53. When there shall not be any officer of Her Majesty's land or marine forces of the rank of captain or of a superior rank, or any adjutant of militia, within convenient distance of the place where any non-commissioned officer or marine, not borne on the books of any of Her Majesty's ships or vessels in commission as aforesaid, and who shall be on furlough, shall be detained by sickness or other casualty rendering necessary an extension of such furlough, it shall be lawful for any justice who shall be satisfied of such necessity to grant an extension of furlough for a period not exceeding one month; and the said justice shall immediately certify such extension, and the cause thereof, to the commanding officer of the division or detachment to which the man belongs, if known, and if not, then to the Secretary of the Admiralty, in order that the necessary allowance of pay and subsistence may be remitted to the marine, who shall not during the period of such extension of furlough be liable to be treated as a deserter; Provided always, that nothing herein contained shall be construed to exempt any marine from trial and punishment according to the provisions of this Act for any false representation made by him in that behalf to the said officer or justice so extending the furlough, or for any breach of discipline committed by him in applying for and obtaining the said extension of furlough.

54. Any person enlisted into Her Majesty's Royal Marine forces as a marine, or who has received marine enlistment money, shall be liable to be taken out of Her Majesty's service only by process or execution on account of any charge of felony, or on account of misdemeanor, or of any crime or offence other than the misdemeanor of refusing to comply with an order of justices for the payment of money, or on account of an original debt proved by affidavit of the plaintiff or of some one on his behalf to amount to the value of thirty pounds at the least over and above all costs of suit, such affidavit to be sworn, without payment of any fee, before some judge of the

court out of which process or execution shall issue, or before some person authorised to take affidavits in such court, of which affidavit, when duly filed in such court, a memorandum shall, without fee, be endorsed upon the back of such process, stating the fact sworn to, and the day of filing such affidavit; but no marine or other person as aforesaid shall be liable by any process whatever to appear before any justice of the peace or other authority whatsoever, or to be taken out of Her Majesty's service by any writ, summons, order, warrant, judgment, execution, or any process whatever issued by or by the authority of any court of law, or any magistrate, justice or justices of the peace, or any other authority whatsoever, for any original debt not amounting to thirty pounds, or for not supporting or maintaining, or for not having supported or maintained, or for leaving or having left chargeable to any parish, township, or place, or to the common fund of any union, any relation or child which such marine or person might, if not in Her Majesty's service, be compellable by law to relieve or maintain, or for neglecting to pay to the mother of any bastard child, or to any person who may have been appointed to have the custody of such child, any sum to be paid in pursuance of an order in that behalf, or for the breach of any contract, covenant, agreement, or other engagement whatever, by parol or in writing, or for having left or deserted his employer or master, or his contract, work, or labour; and all summonses, warrants, commitments, indictments, convictions, judgments, and sentences, on account of any of the matters for which it is herein declared that a marine is not liable to be taken out of Her Majesty's service, shall be utterly illegal, and null and void to all intents and purposes; and any judge of any such court may examine into any complaint made by a marine or by his superior officer, and by warrant under his hand discharge such marine, without fee, he being shown to have been arrested contrary to the intent of this Act, and shall award reasonable costs to such complainant, who shall have for the recovery thereof the like remedy as would have been applicable to the recovery of any costs which might have been awarded against the complainant in any judgment or execution as aforesaid, or a writ of Habeas corpus ad subjiciendum shall be awarded or issued, and the discharge of any such marine out of custody shall be ordered thereupon; provided that any plaintiff, upon notice of the cause of action first given in writing to any marine or left at his last quarters, may proceed in any action or suit to judgment, and have execution other than against the body or marine necessities or equipments of such marine: Provided also, that nothing herein contained relating to the leaving or deserting a master or employer, or to the breach of any contract, agreement, or engagement,

shall apply to persons who shall be really and bonâ fide apprentices duly bound under the age of twenty-one years, as herein prescribed.

55. No person who shall be commissioned and in full pay as an officer in the Royal Marine forces, or who shall be employed in enlisting for such forces, shall be capable of being nominated or elected to be sheriff, and no such officer and no non-commissioned officer of such forces shall be capable of being nominated or elected to be a constable, or overseer, guardian of any union, or any officer of a like description, of any county, hundred, riding, city, borough, town, division, parish, or other place, or to be mayor, portreeve, alderman, or to hold any office in any municipal corporation in any city, borough, or place in Great Britain or Ireland, or be summoned or shall serve as a grand or petit or other juror or upon any inquest, and any summons for him to attend to serve as a grand or petit or other juror or upon an inquest shall be null and void; and every such person is hereby exempted from attendance and service in accordance with any such summons, and from all fines, pains, and penalties for or in consequence of not attending or serving as aforesaid.

56. Every person authorised to enlist recruits for the Royal Marines shall first ask the person offering to enlist whether he belongs to the militia, and also such other questions as the said Lord High Admiral or the said Commissioners may direct to be put to recruits, and shall, immediately after giving him enlisting money, serve him with a notice in the form set forth in the schedule to this Act annexed.

57. Every person who shall receive enlisting money in manner aforesaid shall upon such receipt be deemed to be enlisted as a marine in Her Majesty's service, and while he shall remain with the recruiting party shall be entitled to be billeted.

58. Every person so enlisted as aforesaid shall, within ninety-six hours (any intervening Sunday, Christmas Day, or Good Friday not included), but not sooner than twenty-four hours after such enlistment, appear, together with some person employed in the recruiting service, before a justice of the peace, not being an officer of the marines, for the purpose of being attested as a marine, or of objecting to his enlistment.

59. When a recruit, upon appearing before a justice for the purposes aforesaid, shall dissent from or object to his enlistment, and shall satisfy the justice that the same was effected in any respect irregularly, he shall forthwith discharge the recruit absolutely, and shall report such

discharge to the commandant of the division for which the marine shall have enlisted; but if the recruit so dissenting shall not allege or shall not satisfy the justice that the enlistment was effected irregularly, nevertheless upon repayment of the enlisting money and of any sum received by him in respect of pay, and of a further sum of twenty shillings as smart money, he shall be entitled to be discharged; and the sum paid by such recruit upon his discharge shall be kept by the justice, and, after deducting therefrom one shilling as the fee for reporting the payment to the Secretary of the Admiralty and to the said commandant, shall be paid over to any person belonging to the recruiting party who may demand the same; and the justice who shall discharge any recruit shall in every case give a certificate thereof, signed with his hand, to the recruit, specifying the cause thereof.

60. If the recruit on appearing before a justice shall not dissent from his enlistment, or dissenting shall within twenty-four hours return and state that he is unable to pay the same mentioned in the last section, he shall be attested as follows: the justice, or some person deputed by him, shall read to the recruit the questions set forth in the form contained in the schedule to this Act annexed, cautioning him that if he fraudulently make any false answer thereto he shall be liable to be punished as a rogue and vagabond, and the answers of the recruit shall be recorded opposite to the said questions, and the justice shall require the recruit to make and sign the declaration in the said form, and shall then administer to him the oath of allegiance in the said form; and when the recruit shall have signed the said declaration and taken the oath, the justice shall attest the same by his signature, and shall deliver to the recruiting officer the declaration so signed and attested, and the fee for such attestation, including the declaration and oath, shall be one shilling and no more; and any recruit shall, if he so wish, be furnished with a certified copy of the above-mentioned declaration by the officer who finally approved of him for the service.

61. No recruit, unless he shall have been attested or shall have received pay other than enlisting money, shall be liable to be tried by court-martial; but if any recruit, previously to his being attested, shall by means of any false answer obtain enlistment money, or shall make any false statement in his declaration, or shall refuse to answer any question duly authorised to be put to recruits for the purpose of filling up such declaration, or shall refuse or neglect to go before a justice for the purposes aforesaid, or having dissented from his enlistment shall wilfully omit to return and pay such money as aforesaid, in any of such cases it shall be lawful



for any two justices within the United Kingdom, or for any one justice out of the United Kingdom, acting for the county, district, city, burgh, or place where any such recruit shall at any time happen to be, when he shall be brought before them or him, if in England, to adjudge him to be a rogue and vagabond, and to sentence him to be punished accordingly, and if in Scotland or Ireland, or elsewhere in Her Majesty's dominions, to be imprisoned with hard labour in any prison or house of correction for any period not exceeding three calendar months; and the declaration made by the recruit on his attestation, purporting to be made and subscribed in accordance with the schedule to this Act annexed, shall, in the absence of proof to the contrary, be deemed sufficient evidence of such recruit having represented the several particulars as stated in such declaration; and any marine who shall have given any false answer at the time of or relative to his becoming a marine shall forfeit all pay, wages, and other moneys, be the same naval, marine, or otherwise, which he might otherwise have been entitled to for any period of service in the Royal Marines.

62. Any recruit who shall have been attested, and who shall afterwards be discovered to have given any wilfully false answer to any question directed to be put to recruits, or shall have made any wilfully false statement in the declaration herein-before mentioned, shall be liable, at the discretion of the said Lord High Admiral or the said Commissioners, to be proceeded against before two justices in the manner herein-before mentioned, and by them sentenced accordingly, or to be tried by a district or garrison court-martial for the same, and punished in such manner as such court shall direct.

63. If any recruit shall abscond so that it is not possible immediately to apprehend and bring him before a justice for attestation, the recruiting party shall produce to the justice before whom the recruit ought regularly to have been brought for that purpose a certificate of the name and place of residence and description of such recruit and of his having absconded, and shall declare the same to be true, and the justice to whom such certificate shall be produced shall transmit a duplicate thereof to the Secretary of the Admiralty in order that the same may appear in the Police Gazette.

64. If any man while belonging to a militia regiment shall enlist in and be attested for Her Majesty's Royal Marines, he shall be liable to be tried before a court-martial on a charge of desertion; but it shall be lawful for the Secretary of State for War, on the confession thereof by

such militiaman, or on other proof thereof, to order that in lieu of his being so tried he shall be subjected to a stoppage of one penny a day of his pay for eighteen calendar months, to be applied as the Secretary of State for War shall direct, and further to determine whether such man shall be returned to his militia regiment after such sum shall have been made good, or shall be deemed to be a marine in the same manner as he would have been if he had not been a militiaman at the time of his attestation: Provided also, that every soldier who, while belonging to a militia regiment, enlisted in Her Majesty's Royal Marines, whether such enlistment took place before or after the passing of the Mutiny Act, 1860, shall reckon service towards the performance of his limited engagement from the date of his attestation: Provided also, that any such soldier shall not reckon service for pension until the day on which his engagement for the militia would have expired; but if any such soldier shall, subsequently to his enlistment, have rendered long, faithful, or gallant service, the Lords Commissioners of the Admiralty may, upon the special recommendation of the Deputy Adjutant General, Royal Marines, order that he may reckon service for pension from the date of his attestation.

65. If any non-commissioned officer of the volunteer permanent staff shall enlist into the Royal Marines, he may be tried and punished as a deserter, but if he confesses his desertion the Secretary of State for War, instead of causing him to be tried and punished as a deserter, may cause him to be returned to his service on the volunteer permanent staff, to be there put under stoppages from his pay until he has repaid the amount of any bounty received by him, and the expenses attending his enlistment, and also the value of any arms, &c. issued to him while on the volunteer permanent staff, and not duly delivered up by him, or may cause him to be held to his service in the Royal Marines, with a direction, if it seems fit, that his term of service therein shall not be reckoned for pension until the time when his engagement on the volunteer permanent staff would have expired, and may further cause him to be put under stoppages of one penny a day of his pay until he has repaid the expense attending his engagement or attestation on the volunteer permanent staff, and also the value of any arms, clothing, or appointments issued to him while on the volunteer permanent staff, and not duly delivered up by him.

66. Every person subject to this Act who shall wilfully act contrary to any of its provisions in any matter relating to the enlisting or attesting of recruits for Her Majesty's service shall be liable to be tried for such offence by a general court-

martial, and to be sentenced to such punishment, other than death or penal servitude, as such court may award.

67. It shall be lawful for any justice of the peace or person exercising the office of a magistrate within any of Her Majesty's dominions abroad, or for the officer commanding any ship or vessel of Her Majesty on the books of which any marine may be borne, or on board of which any such marine may be, or, notwithstanding anything in this Act contained, for the commanding officer of any battalion or detachment of Royal Marines, whether borne on the books of any one of Her Majesty's ships or otherwise, to re-engage or enlist and attest out of Great Britain or Ireland any marine desirous of re-enlisting or re-engaging into Her Majesty's Royal Marine forces, if such marine be considered by such commanding officer, justice, or magistrate a fit person to continue in Her Majesty's service; and every such commanding officer, justice, or magistrate shall have the same powers in that behalf as are by this or any other Act of Parliament given to justices of the peace in the United Kingdom for all such purposes of enlistment and attestation, and any marine so re-enlisted or re-engaged shall be deemed to be an attested marine.

68. Any person duly bound as an apprentice who shall enlist into Her Majesty's Royal Marine forces, and shall falsely state to the magistrate before whom he shall be carried and attested that he is not an apprentice, shall be deemed guilty of obtaining money by false pretences, if in England or in Ireland, and of falsehood, fraud, and wilful imposition, if in Scotland, and shall after the expiration of his apprenticeship, whether he shall have been so convicted and punished or not, be liable to serve as a marine according to the terms of the enlistment, and if on the expiration of his apprenticeship he shall not deliver himself up to some officer authorised to receive recruits, such person may be taken as a deserter from Her Majesty's Royal Marine forces.

69. No master shall be entitled to claim an apprentice who shall enlist as a marine in Her Majesty's service unless such master shall, within one calendar month next after such apprentice shall have left his service, go before some justice, and take the oath mentioned in the schedule to this Act annexed, and at the time of making his claim produce to the officer under whose command the recruit shall be the certificate of such justice of his having taken such oath, which certificate such justice is required to give in the form in the schedule to this Act annexed; nor unless such apprentice shall have been bound, if

in England, for the full term of five years, (not having been above the age of fourteen years when so bound,) and, if in Ireland or in the British Isles, for the full term of five years at the least, (not having been above the age of sixteen when so bound,) and, if in Scotland, for the full term at least of four years, by a regular contract or indenture of apprenticeship, duly extended, signed, and tested, and binding on both parties by the law of Scotland prior to the period of enlistment, and unless such contract or indenture in Scotland shall, within three months after the commencement of the apprenticeship and before the period of enlistment, have been produced to a justice of the peace of the county in Scotland wherein the parties reside, and there shall have been endorsed thereon by such justice a certificate or declaration signed by him specifying the date when and the person by whom such contract or indenture shall have been so produced, which certificate or declaration such justice of the peace is hereby required to endorse and sign; nor unless any such apprentice shall, when claimed by such master, be under twenty-one years of age: Provided always, that any master of an apprentice indentured for the sea service shall be entitled to claim and recover him in the form and manner above directed, notwithstanding such apprentice may have been bound for a less term than five or four years as aforesaid: Provided also, that any such master who shall give up the indentures of apprenticeship within one month after the enlisting of such apprentice shall be entitled to receive, to his own use, so much of the bounty payable to such recruit as shall not have been paid to such recruit before notice given of his being an apprentice.

70. No apprentice claimed by his master shall be taken from any division, detachment, recruiting party, or ship of Her Majesty, except under a warrant of a justice residing near and within whose jurisdiction such apprentice shall then happen to be, and before whom he shall be carried; and such justice shall inquire into the matter upon oath (which oath he is hereby empowered to administer), and shall require the production and proof of the indenture, and that notice of the said warrant has been given to the commanding officer, and a copy thereof left with some officer or non-commissioned officer of the party, and that such person so enlisted declared that he was no apprentice; and such justice, if required by such officer or non-commissioned officer, shall commit the offender to the common gaol of the county, division, or place for which such justice is acting, and shall keep the indenture to be produced when required, and shall bind over such person as he may think proper to give evidence against the offender, who shall be tried at the next or at the sessions immediately suc-

ceeding the next general or quarter sessions of such county, division, or place, unless the court shall for just cause put off the trial; and the production of the indenture, with the certificate of the justice that the same was proved, shall be sufficient evidence of the said indenture; and every such offender in Scotland may be tried by the judge ordinary in the county or stewartry in such and the like manner as any person may be tried in Scotland for any offence not inferring a capital punishment: Provided always, that any justice not required as aforesaid to commit such apprentice may deliver him to his master.

71. No person who shall for six months, and either before or after the passing of this Act, have received pay and be borne on the strength and pay list of any division of Her Majesty's Royal Marine forces, of which the last quarterly pay list (if produced) shall be evidence, or been borne as a marine on the books of any of Her Majesty's ships in commission, shall be entitled to claim his discharge on the ground of error or illegality in his enlistment or attestation or re-engagement, or on any other ground whatsoever, but, on the contrary, every such person shall be deemed to have been duly enlisted, attested, or re-engaged, as the case may be.

72. It shall also be lawful for the Lord High Admiral, and also for the said Commissioners for executing the office of Lord High Admiral, to give orders for withholding the pay of any officer or marine for any period during which such officer or marine shall be absent without leave, or improperly absent from his duty, or in case of any doubt as to the proper issue of pay to withhold it from the parties aforesaid until the said Lord High Admiral or the said Commissioners shall come to a determination upon the case.

73. And whereas there is and may be occasion for the marching and also for the quartering of the Royal Marine forces when on shore: Be it enacted, that during the continuance of this Act, upon the order or orders in writing in that behalf under the hand of the Lord High Admiral, or the hands of two or more of the Commissioners for executing the office of Lord High Admiral for the time being, or upon the order or orders in writing in that behalf under the hand of any colonel commandant or commanding officer of any division of Royal Marines, it shall be lawful for all constables and other persons specified in this Act in Great Britain and Ireland, and they are hereby required, to billet the officers and marines, whether marching or otherwise, and all staff and field officers horses, and all bät and baggage horses belonging to the Royal Marine

forces, when on actual service, not exceeding for each officer the number for which forage is or shall be allowed by Her Majesty's regulations, in victualling houses and other houses specified in this Act, taking care in Ireland not to billet less than two men in any one house; and they shall be received by the occupiers of the houses in which they are so billeted, and be furnished by such victualler with proper accommodation in such houses, and with a separate bed for each marine, or if any victualler shall not have sufficient accommodation in the house upon which a marine is billeted, then in some good and sufficient quarters to be provided by such victualler in the immediate neighbourhood, and in Great Britain with diet and small beer, and in Great Britain and Ireland with stables, oats, hay, and straw for such horses as aforesaid, paying and allowing for the same the several rates herein-after provided; and at no time when marines are on their march shall any of them be billeted above one mile from the place mentioned in the route, care being always taken that the billets be made out for the less distant houses in which suitable accommodation can be found before making out billets for the more distant; and in all places where marines shall be billeted in pursuance of this Act, the officers and their horses shall be billeted in one and the same house, except in case of necessity; and the constables are hereby required to billet all marines on their march in the manner required by this Act upon the occupiers of all houses within one mile of the place mentioned in the route, and whether they be in the same or a different county in like manner in every respect as if such houses were all locally situated within such place: Provided always, that nothing herein contained shall be construed to extend to authorise any constable to billet marines out of the county to which such constable belongs when the constable of the adjoining county shall be present and shall undertake to billet the due proportion of men in such adjoining county; and no more billets shall at any time be ordered than there are effective marines and horses present to be billeted; all which billets, when made out by such constables, shall be delivered into the hands of the commanding officer present, or to the non-commissioned officer on the spot; and if any person shall find himself aggrieved by having an undue proportion of marines billeted in his house, and shall prefer his complaint, if against a constable or other person not being a justice, to one or more justices, and if against a justice, then to two or more justices, within whose jurisdiction such marines are billeted, such justices respectively shall have power to order such of the marines to be removed and to be billeted upon other persons as they shall see cause; and when any horses belonging to the officers of Her Majesty's Royal Marine forces shall be billeted upon

the occupiers of houses who shall have no stables, then, upon a written requisition of the officer commanding such marines, the constable is hereby required to billet the horses upon some other person or persons having stables, and who are by this Act liable to have officers and marines billeted upon them, and any two or more justices of the peace may order a proper allowance to be paid by the persons relieved to the persons receiving such horses, or to be applied in the furnishing the requisite accommodation; and the commanding officer may exchange any man or horse billeted in any place with another man or horse billeted in the same place, for the convenience or benefit of the service, provided the number of men and horses do not exceed the number at that time billeted on such houses respectively, and the constables are hereby required to billet such men and horses so exchanged accordingly; and it shall be lawful for any justice, at the request of any officer or non-commissioned officer commanding any marines requiring billets, to extend any route, or to enlarge the district within which billets shall be required, in such manner as shall appear to be most convenient to Her Majesty's service: Provided also, that to prevent or punish all abuses in billeting marines, it shall be lawful for any justice, within his jurisdiction, by warrant or order under his hand, to require any constable to give him an account in writing of the number of officers and marines who shall be quartered by such constables, together with the names of the persons upon whom such officers and marines are billeted, stating the street or place where such persons dwell, and the signs, if any, belonging to the houses: Provided always, that no officer shall be compelled or compellable to pay anything for his lodging where he shall be duly billeted: Provided also, that no justice being an officer of Royal Marines shall directly or indirectly be concerned in billeting or appointing quarters under this Act.

74. The innholder or other person on whom any marine is billeted in Great Britain shall, if required by such marine, furnish him for every day on the march, and for a period not exceeding two days, when halted at any intermediate place upon the march, and for the day of the arrival at the place of final destination, with one hot meal in each day, the meal to consist of such quantities of diet and small beer as may be fixed by Her Majesty's regulations, not exceeding one pound and a quarter of meat previously to being dressed, one pound of bread, one pound of potatoes or other vegetables, and two pints of small beer, and vinegar, salt, and pepper, and for such meal the innholder or other person furnishing the same shall be paid the sum of tenpence, and twopence halfpenny for a bed; and all innholders and other persons on whom marines may be billeted in

Great Britain or Ireland, except when on the march in Great Britain, and entitled to be furnished with the hot meal as aforesaid, shall furnish such marines with a bed and with candles, vinegar, and salt, and shall allow them the use of fire, and the necessary utensils for dressing and eating their meat, and shall be paid in consideration thereof the sum of fourpence per diem for each marine; and the sum to be paid to the innholder or other person on whom any of the horses belonging to Her Majesty's Royal Marine forces shall be billeted, in Great Britain or Ireland, for ten pounds of oats, twelve pounds of hay, and eight pounds of straw, shall be one shilling and ninepence per diem for each horse; and every officer or non-commissioned officer commanding a division, detachment, or party shall every four days, or before they shall quit their quarters if they shall not remain so long as four days, settle and discharge the just demands of all victuallers or other persons upon whom such officers, marines, or horses are billeted, out of the pay and subsistence of such officers and marines, before any part of the said pay or subsistence be paid or distributed to them respectively; and if any such officer or non-commissioned officer shall not pay the same as aforesaid, then, upon complaint and oath made thereof by any two witnesses before two justices of the peace for the county, riding, division, liberty, city, borough, or place where such quarters were situate, sitting in quarter or petty sessions, the Secretary of the Admiralty is hereby required, upon certificate of the justices before whom such oath shall be made of the sum due to complainant, to order payment of the amount which shall be charged against such officer; and in case of any marines being suddenly ordered to march, and of the commanding officer or non-commissioned officer not being enabled to make payment of the sums due on account of billets, every such officer or non-commissioned officer shall before his departure make up the account with every person upon whom any such marines may have been billeted, and sign a certificate thereof; which account and certificate, on being transmitted to the Secretary of the Admiralty, shall be immediately paid, and charged to the account of such officer or non-commissioned officer.

75. For the regular provision of carriages for the Royal Marine forces and their baggage on their marches in Great Britain and Ireland, all justices of the peace within their several jurisdictions, being duly required thereunto by order of the said Lord High Admiral, or two or more of the Commissioners for executing the said office of Lord High Admiral for the time being, or any colonel commandant or commanding officer of a division of Royal Marines, shall, on the production of such order, or a copy thereof certified by

the commanding officer, to them or any one or more of them, by the officer or non-commissioned officer of the party of marines so ordered to march, issue a warrant to any constable having authority to act in any place from, through, near, or to which such marines shall be ordered to march, (for each of which warrants a fee of one shilling only shall be paid,) requiring him to provide the carriages, horses, oxen, and drivers therein mentioned, (allowing sufficient time to do the same,) specifying the places from and to which the said carriages shall travel, and the distance between the places, for which distance only so specified payment shall be demanded, and which distance shall not, except in cases of pressing emergency, exceed the day's march prescribed in the order of route, and shall in no case exceed twenty-five miles; and the constables receiving such warrant shall order such persons as they shall think proper, having carriages, to furnish the requisite supply, who are hereby required to furnish the same accordingly; and in case sufficient carriages cannot be procured within the proper jurisdiction, any justice of the next adjoining jurisdiction shall, by a like course of proceeding, supply the deficiency; and in order that the burden of providing carriages may fall equally, and to prevent inconvenience arising from there being no justice residing near the place where marines may be quartered on the march, the justice or justices residing nearest to such place shall cause a list to be made out, at least once in every year, of all persons liable to furnish such carriages, and of the number and description of their said carriages, which list shall at all seasonable hours be open to the inspection of the said persons, and shall by warrant under his hand authorise the constables within his jurisdiction to give orders to provide carriages without any special warrant from him for that purpose, which orders shall be valid in all respects; and all orders for such carriages shall be made from such lists in regular rotation, so far as the same can be done.

76. In every case in which the whole distance for which any carriage shall be impressed shall be under one mile the rate of a full mile shall be paid; and the rates to be paid for carriages impressed shall be, in Great Britain, for every mile which a waggon with four or more horses, or a wain with six oxen or four oxen and two horses, shall travel, one shilling; and for every mile any waggon with narrow wheels, or any cart with four horses carrying not less than fifteen hundredweight, shall travel, ninepence; and for every mile every other cart or carriage with less than four horses, and not carrying fifteen hundredweight, shall travel, sixpence; and in Ireland for every hundredweight loaded on any wheel carriage one halfpenny per mile; and in Great Britain such further rates may be added, not

exceeding a total additional sum per mile of fourpence, threepence, or twopence to the respective rates of one shilling, ninepence, and sixpence, as may seem reasonable to the justices assembled at general sessions for their respective districts, or to the recorder at the sessions of the peace of any municipal city, borough, or town; and the order of such justices or recorder shall specify the average price of hay and oats at the nearest market town at the time of fixing such additional rates, and the period for which the order shall be enforced, not exceeding ten days, beyond the next general sessions; and no such order shall be valid unless a copy thereof, signed by the presiding magistrate and one other justice, or by the recorder, shall be transmitted to the Secretary of the Admiralty within three days after the making thereof; and also in Great Britain when the day's march shall exceed fifteen miles, the justice granting his warrant may fix a further reasonable compensation not exceeding the usual rate of hire fixed by this Act; and when additional rates or compensation shall be granted, the justice shall insert in his own hand in the warrant the amount thereof, and the date of the order of sessions, if fixed by sessions, and the warrant shall be given to the officer commanding as his voucher; and the officer or non-commissioned officer demanding carriages by virtue of the warrant of a justice shall, in Great Britain, pay down the proper sums into the hands of the constable providing carriages, who shall give receipts for the same on unstamped paper; and, in Ireland, the officers or non-commissioned officers as aforesaid shall pay the proper sums to the owners or drivers of the carriages, and one third part of such payment shall be made before the carriage be loaded, and all the said payments in Ireland shall be made, if required, in presence of a justice or constable; and no carriage shall be liable to carry more than thirty hundredweight in Great Britain, and in Ireland no car shall be liable to carry more than six hundredweight, and no dray more than twelve hundredweight; but the owner of such carriages in Ireland consenting to carry a greater weight shall be paid at the same rate for every hundredweight of the said excess; and the owners of such carriages in Ireland shall not be compelled to proceed, though with any less weight, under the sum of threepence a mile for each car and sixpence a mile for each dray; and the loading of such carriages in Ireland shall be first weighed, if required, at the expense of the owner of the carriage, if the same can be done in a reasonable time without hindrance of Her Majesty's service: Provided also, that a cart with one or more horses, for which the furnisher shall receive ninepence a mile, shall be required to carry fifteen hundredweight at the least; and that no penalties or forfeitures in any Act relating to highways

or turnpike roads in the United Kingdom shall apply to the number of horses or oxen or weight of loading of the aforesaid carriages, nor shall any such carriages on that account be stopped or detained; and whenever it shall be necessary to impress carriages for the march of marines from Dublin at least twenty-four hours notice of such march, and in case of emergency as long notice as the case will admit, shall be given to the Lord Mayor of Dublin, who shall summon a proportional number of cars and drays at his discretion out of the licensed cars and drays and other cars and drays within the county of the said city, and they shall by turns be employed on this duty at the prices and under the regulations herein-before mentioned; and no country cars, drays, or other carriages coming to markets in Ireland shall be detained or employed against the will of the owners in carrying the baggage of marines on any pretence whatever.

77. It shall be lawful for the Lord High Admiral, or the Commissioners for executing the office of Lord High Admiral, or the Lord Lieutenant or Chief Governors of Ireland, by their or his orders distinctly stating that a case of emergency doth exist, signified by the Secretary of the Admiralty, or, if in Ireland, by the chief secretary or under secretary, or the first clerk in the military department, to authorise any commanding officer of Her Majesty's Royal Marine forces in any district or place, or to the chief acting agents for the supply of stores and provisions, by writing under his hand, reciting such order of the Lord High Admiral, or the said Commissioners, or Lord Lieutenant or Chief Governors aforesaid, to require all justices within their several jurisdictions in Great Britain and Ireland to issue their warrants for the provision, not only of waggons, wains, carts, and cars kept by or belonging to any person and for any use whatsoever, but also of saddle horses, coaches, postchaises, chaises, and other four-wheeled carriages kept for hire, and of all horses kept to draw carriages licensed to carry passengers, and also of boats, barges, and other vessels used for the transport of any commodities whatsoever upon any canal or navigable river as shall be mentioned in the said warrants, therein specifying the place and distance to which such carriages or vessels shall go; and on the production of such requisition, or a copy thereof certified by the commanding officer, to such justice, by any officer of the corps ordered to be conveyed, such justice shall take all the same proceedings in regard to such additional supply so required on such emergency as he is by this Act required to take for the ordinary provision of carriages; and all provisions whatsoever of this Act as regards the procuring of the ordinary supply of carriages, and the duties of officers and non-commissioned

officers, justices, constables, and owners of carriages in that behalf, shall be to all intents and purposes applicable for the providing and payment according to the rates of posting or of hire usually paid for such other description of carriages or vessels so required on emergency, according to the length of the journey or voyage in each case, but making no allowance for post horse duty, or turnpike, canal, river, or lock tolls, which duty or tolls are hereby declared not to be demandable for such carriages and vessels while employed in such service or returning therefrom; and it shall be lawful to convey thereon not only the baggage, provisions, and military stores of such detachment, but also the officers, marines, servants, women, children, and other persons of and belonging to the same.

78. It shall be lawful for the justices of the peace assembled at their quarter sessions to direct the treasurer to pay, without fee, out of the public stock of the county or riding, or if such public stock be insufficient then out of moneys which the said justices shall have power to raise for that purpose, in like manner as for county gaols and bridges, such reasonable sums as shall have been expended by the constables within their respective jurisdictions for carriages and vessels, over and above what was or ought to have been paid by the officer requiring the same, regard being had to the season of the year and the condition of the ways by which such carriages and vessels are to pass; and in Scotland such justices shall direct such payments to be made out of the rogues money and assessments directed and authorised to be assessed and levied by an Act passed during the session holden during the twentieth and twenty-first years of the reign of Her present Majesty, chapter seventy-two.

79. It shall be lawful for the said Lord Lieutenant or other Chief Governor for the time being of Ireland to depute, by warrant under his hand and seal, some proper person to sign routes in cases of emergency for the marching of any of Her Majesty's Royal Marine forces in Ireland in the name of such Lord Lieutenant or Chief Governor.

80. All officers and marines on duty or on their march, being in proper uniform, dress or undress, and their horses and baggage, and all recruits marching by route, and all prisoners under military escort, and all carriages and horses belonging to Her Majesty or employed in her service under the provisions of this Act, or in any of Her Majesty's colonies, when employed in conveying any such persons as aforesaid or their baggage, or returning from conveying the same, shall be exempted from the payment

of any duties and tolls on embarking or disembarking from or upon any pier, wharf, quay, or landing place, or in passing along or over any turnpike or other roads or bridges, otherwise demandable by virtue of any Act already passed or hereafter to be passed, or by virtue of any prescription, grant, or custom, or by virtue of any Act or ordinance, order or direction, of any colonial legislature or other authority in any of Her Majesty's colonies; and if any toll collector shall demand or receive toll from any marine officer or marine on duty or on their march who shall be in proper uniform, dress or undress, or for their horses, and who by this Act is exempted from payment thereof, or from any recruits marching by route, or from any prisoners under military escort, or for any carriages or horses belonging to Her Majesty or employed in Her service under the provisions of this Act, when conveying persons or baggage, or returning therefrom, every such collector shall for every such offence be liable to a penalty not exceeding five pounds; provided that nothing herein contained shall exempt any boats, barges, or other vessels employed in conveying the said persons, horses, baggage, or stores along any canal from payment of tolls in like manner as other boats, barges, and vessels are liable thereto, except when employed in cases of emergency as herein mentioned; and that when any officers or marines on service shall have occasion in the march by route to pass regular ferries in Scotland, the officer commanding shall be at liberty to pass over with his marines as passengers, paying for himself and each marine one half only of the ordinary rate payable by passengers, or he shall be at liberty to hire the ferry boat for himself and his party, debarring all others for that time, and shall in such case pay only half the ordinary rate for such boat.

81. Every marine upon being discharged from the service shall be entitled to an allowance (not exceeding in any case the amount of twenty-one days marching money) to enable him to reach his home, or the place at which he shall at the time of his discharge decide to take up his residence, such place not being at a greater distance from the place of his discharge than the place of his original enlistment, which allowance shall be calculated according to the distance he has to travel: Provided always, that no person who shall purchase his own discharge, or be discharged on account of misbehaviour, or at his own desire, before the expiration of his period of service, shall be entitled to any such allowance.

82. If any constable or other person who by virtue of this Act shall be employed in billeting any officers or marines in any part of the United Kingdom shall presume to billet any such officer

or marine in any house not within the meaning of this Act without the consent of the owner or occupier thereof; or shall neglect or refuse to billet any officer or marine on duty when thereunto required in such manner as is by this Act directed, provided sufficient notice be given before the arrival of such marines; or shall receive, demand, or agree for any money or reward whatsoever in order to excuse any person from receiving any such officer or marine; or shall quarter any of the wives, children, men or maid servants of any officer or marine in any such houses against the consent of the occupiers; or shall neglect or refuse to execute such warrants of the justices as shall be directed to him for providing carriages, horses, or vessels, or shall demand more than the legal rates for the same; or if any person ordered by any constable in manner herein-before directed to provide carriages, horses, or vessels shall refuse or neglect to provide the same according to the orders of such constable, or shall demand more than the legal rates for the same, or shall do any act or thing by which the execution of any warrants for providing carriages, horses, or vessels shall be hindered; or if any person liable by this Act to have any officer or marine quartered on him shall refuse to receive any such officer or marine, or to afford him proper accommodation or diet in the house of such person in which he is quartered, or to furnish the several things directed to be furnished to officers and marines, or shall neglect or refuse to furnish good and sufficient stables, together with good and sufficient oats, hay, and straw in Great Britain and Ireland, for each horse, in such quantities and at such rates as herein-before provided, or if any innkeeper or victualler not having good and sufficient stables shall refuse to pay over to the person or persons who may provide stabling such allowance by way of compensation as shall be directed by any justice of the peace, or shall pay any sum of money to any marine on the march in lieu of furnishing in kind the diet and small beer to which such marine is entitled; such constable, victualler, and other person respectively shall forfeit for every offence, neglect, or refusal any sum not exceeding five pounds nor less than forty shillings; and if any person shall personate or represent himself to be a marine or marine recruit with the view of fraudulently obtaining a billet or money in lieu thereof, he shall for every such offence forfeit any sum not exceeding five pounds nor less than twenty shillings.

83. If any officer of Royal Marines shall take upon him to quarter men otherwise than is allowed by this Act, or shall use or offer any menace or compulsion to or upon any justice, constable, or other civil officer tending to deter and discourage any of them from performing any part of their duty under this Act, or to do any-

thing contrary thereto, such officer shall for every such offence, being thereof convicted before any two or more justices of the county by the oath of two credible witnesses, be deemed and taken to be ipso facto cashiered, and shall be utterly disabled to hold any military employment in Her Majesty's service; provided a certificate of such conviction be forthwith transmitted by the said justices to the Secretary of the Admiralty, and that the conviction be affirmed at some quarter sessions of the peace for the said county to be held next after the expiration of three months after such certificate shall have been transmitted as aforesaid; and if any marine officer shall take or knowingly suffer to be taken from any person any money or reward for excusing the quartering of officers or marines, or shall billet any of the wives, children, men or maid servants of any officer or marine in any house against the consent of the occupier, he shall for any of the said offences, upon being convicted thereof before a general court-martial, be cashiered; and if any officer shall constrain any carriage to travel beyond the distance specified in the justice's warrant, or shall not discharge the same in due time for their return home on the same day if it be practicable, except in the case of emergency for which the justice shall have given licence, or shall compel the driver of any carriage to take up any marine or servant (except such as are sick) or any woman to ride therein, except in cases of emergency as aforesaid, or shall force any constable, by threatening words, to provide saddle horses for himself or servants, or shall force horses from their owners, or in Ireland shall force the owner to take any loading until the same shall be first duly weighed, if the same shall be required, and can be done within a reasonable time, or shall, contrary to the will of the owner or his servant, permit any person whatsoever to put any greater load upon any carriage than is directed by this Act, he shall forfeit for every offence any sum not exceeding five pounds nor less than forty shillings.

84. Every marine officer or marine who shall, without warrant from one or more of Her Majesty's justices, forcibly enter into or break open the dwelling house or outhouse of any person whomsoever in pursuit of any deserters, shall, upon due proof thereof, forfeit the sum of twenty pounds.

85. Any person who shall knowingly detain, buy, or exchange, or otherwise receive from any marine or marine deserter, or any other person acting for or on his behalf, upon any account or pretence whatsoever, or who shall solicit or entice any marine or marine deserter, or shall be employed by any marine or marine deserter, knowing him to be such, to sell any arms, ammunition, medals for good conduct, or distinguishment, or

other service, marine clothes, or military furniture, or any other articles which, according to the custom of the marine corps, are generally deemed regimental or divisional necessities, or any provisions, sheets, or other articles used in barracks or provided under barrack regulations, whether on shore or afloat, and whether the marine or marine deserter or other person be or be not borne on the books of any one of Her Majesty's ships, or be or be not embarked, or who shall have in his or her possession or keeping any arms, ammunition, medals, marine clothes, or military furniture, or any other articles which, according to the custom of the marine corps, are generally deemed regimental or divisional necessities, or any provisions, spirits, sheets, or other articles used in barracks or provided under barrack regulations, and shall not give a satisfactory account how he or she came by the same, or shall change or cause the colour or mark of any such clothes, appointments, necessities, sheets, or other articles to be changed or defaced, or who shall pawn, sell, or deposit in any place or with any person such articles of regimental necessities, with or without the consent of such marine, shall forfeit for every such offence any sum not exceeding twenty pounds, together with treble the value of all or any of the several articles; and if any person having been at any time previously convicted of either of the above offences under this or any previous Act for the regulation of Her Majesty's Royal Marine forces while on shore shall afterwards be guilty of any such offence, he or she shall for every such offence forfeit any sum not exceeding twenty pounds but not less than five pounds, and the treble value of all or any of the several articles, and shall, in addition to such forfeiture, be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned, with or without hard labour, for such term not exceeding six calendar months as the convicting justice or justices shall think fit; and upon any information against any person for a second or any subsequent offence, a copy of the former conviction, certified by the proper officer having the care or custody of such conviction, or any copy of the same proved to be a true copy, shall be sufficient evidence to prove such former conviction; and if any credible person shall prove, on oath before a justice of the peace or person exercising like authority according to the laws of that part of Her Majesty's dominions in which the offence shall be committed, a reasonable cause to suspect that any person has in his or her possession or on his or her premises any property of the description herein-before described, on or with respect to which any such offence shall have been committed, such justice may and he is hereby required to grant a warrant to search for such property as in the case of stolen goods; and if upon



such search any such property shall be found, the same shall and may be seized by the officer charged with the execution of such warrant, who shall bring the offender in whose possession the same shall be found before the same or any other justice of the peace, to be dealt with according to law.

86. Every person (except such recruiting parties as may be stationed under military command) who shall cause to be advertised, posted, or dispersed bills for the purpose of procuring recruits or substitutes for the Royal Marines, or shall open or keep any house or place of rendezvous or office, or receive any person therein under such bill or advertisement as connected with the marine recruiting service, or shall directly or indirectly interfere therewith, without permission in writing from the Lord High Admiral or the said Commissioners for executing the office of Lord High Admiral, shall forfeit for every such offence a sum not exceeding twenty pounds.

87. For the better preservation of the game and fish in or near places where any officer shall at any time be quartered, every officer who shall, without leave in writing from the person or persons entitled to grant such leave, take, kill, or destroy any game or fish within the United Kingdom, shall for every such offence forfeit the sum of five pounds.

88. If any action shall be brought against any member or members of a court-martial to be assembled under the authority of this Act, or of any Act heretofore passed for the regulation of Her Majesty's Royal Marine forces while on shore, in respect of the proceedings or the sentence thereof, or against any other person, for anything done in pursuance or under the authority of this Act, or of any Act heretofore passed for the regulation of Her Majesty's Royal Marine forces while on shore, the same shall be brought in some one of the Courts of Record at Westminster or Dublin, or in the Court of Session in Scotland, and shall be commenced within six months next after the cause of action shall arise, and it shall be lawful for the defendant or defendants therein, or in any such action now pending, to plead thereto the general issue, and to give all special matter in evidence on the trial; and if the verdict shall be for the defendant in any such action, or if the plaintiff shall become nonsuit or suffer any discontinuance thereof, or if, in Scotland, the court shall see fit to assoilzie the defendant or dismiss the complaint, the court in which the matter shall be tried shall allow the defendant treble costs, for the recovery of which he shall have the like remedy as in other cases where costs by the laws of this realm are given to defendants.

89. All offences for which any pecuniary penalty or forfeiture not exceeding twenty pounds, over

and above any forfeiture of value or treble value, is by this Act imposed, shall and may be heard and determined by any justice of the peace in or near to the place where the offence shall be committed, or where the offender may at any time happen to be; and all such penalties and forfeitures, and forfeiture of value and treble value, and also the reasonable costs attending the prosecution, to be duly ascertained and awarded by such justice, shall and may be enforced and recovered in the same manner as any pecuniary penalties may be recovered under the provisions of an Act passed in the twelfth year of the reign of Her Majesty, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders:" Provided always, that in all cases in which there shall not be sufficient goods whereon any penalty or forfeiture or treble value can be levied, the offender may be committed and imprisoned, with or without hard labour, for any time not exceeding six calendar months; which said recited Act shall be used and applied in Scotland and in Ireland for the recovery of all such penalties and forfeitures or treble value as fully to all intents as if the said recited Act had extended to Scotland and Ireland, anything in the said recited Act, or in an Act passed in the fourteenth and fifteenth years of the reign of Her Majesty Queen Victoria, intituled "An Act to consolidate and amend the Acts regulating the proceedings at petty sessions, and the duties of justices of the peace out of quarter sessions, in Ireland," to the contrary notwithstanding; and all such offences committed in the British Isles, or in any of Her Majesty's dominions other than the United Kingdom, may be determined, and the penalties and forfeitures of value or treble value recovered, before any justices of the peace or persons exercising like authority, according to the laws of Her Majesty's dominions in which the offence shall be committed or the offender may at any time happen to be, and for default of payment the offender shall be punished as if the offence had been committed in the United Kingdom; and all penalties and forfeitures by this Act imposed exceeding twenty pounds shall be recovered by action in some of the Courts of Record at Westminster or in Dublin, or in the Court of Session in Scotland, and in no other court in the United Kingdom, and may be recovered in the British Isles or in any other part of Her Majesty's dominions, in any of the royal or superior courts of such isles or other parts of Her Majesty's dominions.

90. One moiety of every such penalty or forfeiture, not including any treble value of any articles, shall go to the person who shall inform or sue for the same, and the other moiety, together with the treble value of such articles,

or, where the offence shall be proved by the person who shall inform, then the whole of the penalty and such treble value, shall be paid over and applied in such manner as the Lord High Admiral or the Commissioners for executing the office of Lord High Admiral shall direct, anything in an Act passed in the sixth year of the reign of His late Majesty King William the Fourth, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," or in any other Act or Acts of Parliament, to the contrary notwithstanding; and every justice who shall adjudge any penalty under this Act shall within four days thereafter at the furthest report the same, and his adjudication thereof, to the Secretary of the Admiralty.

91. It shall be lawful for any two justices of the peace, within their respective jurisdictions, to grant or transfer any licence for selling by retail any spirit, beer, wine, cider, or perry to any person or persons applying for the same who shall hold any canteen under any lease thereof, or by agreement with any department or other authority under the said Lord High Admiral, or the Commissioners for executing the office of Lord High Admiral for the time being, without regard to the time of year, or any notices or certificates required by any Act in respect of such licences; and the commissioners of excise or their proper officers within their respective districts shall also grant or transfer any such licence as aforesaid; and such persons holding such canteens, and having such licences as aforesaid, may sell therein victuals, and all such excisable liquors as they shall be licensed and empowered to sell, without being subject for so doing to any penalty or forfeiture whatever.

92. Any justice in the United Kingdom, within whose jurisdiction any marine shall be quartered on shore, may summon such marine before him, which summons such marine is hereby required to obey, and take his examination in writing upon oath touching the place of his last legal settlement; and such justice shall give an attested copy of such examination to the person so examined, to be by him delivered to his commanding officer to be produced when required; which said examination and such attested copy thereof shall be at any time admitted as good and legal evidence as to such legal settlement before any justice or at any general or quarter sessions of the peace, although such marine be dead or absent from the kingdom: Provided always, that in case any marine shall be again summoned to make oath as aforesaid, then, on such examination or such attested copy being produced, such marine shall not be obliged to make any other or further oath with regard to his legal settlement, but shall leave with such justice a copy of such examination or a copy of such attested copy of examination, if required: Pro-

vided also, that when no such examination shall have been required, the statement made on oath by the recruit on his attestation of his place of birth shall be taken to be his last place of settlement until legally disproved.

93. All oaths and declarations which are authorised or required by this Act may be administered (unless where otherwise provided) by any justice of the peace or other person having authority to administer oaths and declarations; and any person giving false evidence, or taking a false oath or declaration where an oath or declaration is authorised or required to be taken by this Act, and being thereof duly convicted, shall be deemed guilty of wilful and corrupt perjury, and shall be liable to such pains and penalties as persons convicted of wilful and corrupt perjury are or may be subject and liable to; and every commissioned officer convicted before a general court-martial of perjury shall be cashiered, and every marine or other person amenable to the provisions of this Act found guilty thereof by a general or other court-martial shall be punished at the discretion of such court.

94. All clauses and provisions in this Act contained relating to England shall be construed to extend to Wales and to the town of Berwick-upon-Tweed; and the provisions of this Act shall apply to all persons who are or shall be commissioned or in pay as an officer of Royal Marines, or who are or shall be listed or in pay as a non-commissioned officer or marine; and all clauses and provisions relating to marines shall be construed to include non-commissioned officers and drummers, unless when otherwise provided; and all clauses and provisions relating to justices shall be construed to extend to all magistrates authorised to act as such in their respective jurisdictions; and all the powers given to and regulations made for the conduct of constables, and all penalties and forfeitures for any neglect thereof, shall extend to all tithingmen, head-boroughs, and such like officers, and to all inspectors or other officers of police, and to high constables and other chief officers and magistrates of cities, towns, villages, and places in England and Ireland, and to all justices of the peace, magistrates of burghs, commissioners of police, and other chief officers and magistrates of cities, towns, villages, parishes, and places in Scotland, who shall act in the execution of this Act; and all powers and provisions for billeting marines in victualling houses shall extend and apply to all inns, hotels, livery stables, alehouses, and to the houses of sellers of wine by retail, whether British or foreign, to be drunk in their own houses or places thereunto belonging, to all houses of persons licensed to sell beer, ale, porter, cider, or perry by retail, to be consumed or drunk in their dwelling houses or premises, and to all houses of persons selling brandy, spirits, strong

waters, cider, or metheglin by retail in Great Britain and Ireland; and in Ireland, when there shall not be found sufficient room in such houses, then marines may be billeted in such manner as has been heretofore customary: Provided always, that no officer or marine shall be billeted in Great Britain in any private houses, or in any canteen held or occupied under the authority of the Admiralty, War, or Marine Department, or upon persons who keep taverns only, being vintners of the city of London admitted to their freedom of that company in right of patrimony or apprenticeship, notwithstanding such persons who keep such taverns only have taken out victualling licences; nor in the house of any distiller kept for distilling brandy and strong waters; nor in the house of any shopkeeper whose principal dealings shall be more in other goods and merchandise than in brandy and strong waters, so as such distillers and shopkeepers do not permit tippling in such houses; nor in the house or residence in any part of the United Kingdom of any foreign consul duly accredited as such.

95. This Act shall be in force within Great Britain from the twenty-fifth day of April one thousand eight hundred and seventy until the twenty-fifth day of April one thousand eight

hundred and seventy-one inclusive; and within Ireland, and in Jersey, Guernsey, Alderney, Sark, and the Isle of Man, and the islands thereto belonging, from the first day of May one thousand eight hundred and seventy until the first day of May one thousand eight hundred and seventy-one inclusive; and within the garrison of Gibraltar and within the Mediterranean, and in Spain and Portugal, from the first day of August one thousand eight hundred and seventy until the first day of August one thousand eight hundred and seventy-one inclusive; and in all other parts of Europe where Royal Marine forces may be serving, and the West Indies and North America, and Cape of Good Hope, from the first day of September one thousand eight hundred and seventy until the first day of September one thousand eight hundred and seventy-one inclusive; and in all other places from the first day of February one thousand eight hundred and seventy-one until the first day of February one thousand eight hundred and seventy-two inclusive: Provided always, that this Act shall, from and after the receipt and promulgation thereof in general orders in any part of Her Majesty's dominions or elsewhere beyond the seas, become and be in full force, anything herein contained to the contrary notwithstanding.

---

SCHEDULE referred to by this Act.

---

FORM of OATHS to be taken by MEMBERS of  
COURTS-MARTIAL.

You shall well and truly try and determine according to the evidence in the matter now before you.  
So help you GOD.

You shall duly administer justice, according to the rules and articles for the better government of Her Majesty's Royal Marine forces, and according to an Act now in force for the regulation of the said forces while on shore, without partiality, favour, or affection, and if any doubt shall arise which is not explained by the said articles or Act, according to your conscience, the best of your understanding, and the custom of war in the like cases: And you shall not divulge the sentence of the court until it shall be duly approved; neither shall you, upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a witness by a court of justice or a court-martial in a due course of law.  
So help you GOD.

FORM of OATH of JUDGE ADVOCATE.

I do swear, That I will not, upon any account whatsoever, disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a witness by a court of justice or a court-martial in a due course of law; and that I will not, unless it be necessary for the due discharge of my official duties, disclose the sentence of the court until it shall be duly approved.  
So help me GOD.

NOTICE to be given to a RECRUIT at the  
Time of his ENLISTMENT.

Date 18 .

A.B.

Take notice, that you enlisted with  
at o'clock\* on  
the day of for the Royal  
Marines, and if you do not come forward to  
[Here name some place] on or before o'clock\*  
on the day of for  
the purpose of being taken before a justice,

---

\* At A.M. or P.M., as the case may be.

either to be attested or to release yourself from your engagement by repaying the enlisting shilling and any pay you may have received as a recruit, and by paying twenty shillings as smart money, you will be liable to be punished as a rogue and vagabond.

You are hereby also warned that you will be liable to the same punishment if you make any wilfully false representations at the time of attestation.

*Signature of the non-commis- }  
sioned officer serving the notice.*

#### DECLARATION to be made by RECRUIT on ATTESTATION.

I now residing in the parish of \_\_\_\_\_, do solemnly and sincerely declare, that to the best of my knowledge and belief I was born in the parish of (a) \_\_\_\_\_ in or near the town of (b) \_\_\_\_\_ in the county of (c) \_\_\_\_\_, and am \_\_\_\_\_ years of age; that I am of the trade or calling of \_\_\_\_\_ [or of no trade or calling, *as the case may be*]; that I am not an apprentice; that I am married (that I am not a widower; that I am a widower, and that I have (or have not) children) [or not married, *as the case may be*]; that I do not belong to the militia, or to the naval coast volunteers, or royal naval volunteers, or to any portion of Her Majesty's land or sea forces; that I have never served Her Majesty by land or sea in any military, marine, or naval employment whatsoever, except \_\_\_\_\_; that I have never been marked with the letter D; that I have never been rejected as unfit for Her Majesty's service on any previous enlistment; that I was enlisted at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ m. by \_\_\_\_\_

\_\_\_\_\_ , and that I have read [or had read to me] the notice then given to me and understood its meaning; that I enlisted for a bounty of \_\_\_\_\_ and a free kit [*as the case may be*], and have no objection to make to the manner of my enlistment; that I am willing to be attested to serve in the Royal Marines for the term of [the blank after the words "term of" to be filled up with twelve years, if the person enlisted is of the age of eighteen years or upwards; but if under that age, then the difference between his age and eighteen is to be added to such twelve years], provided Her Majesty should so long require my services, and also for such further term, not exceeding two years, as shall be directed the by commanding officer on any foreign station.

*Signature of recruit.*

*Signature of witness.*

*Note (a), (b), (c).—These blanks need not be filled up if the recruit is unable to give the requisite information.*

#### OATH to be taken by a RECRUIT on ATTESTATION.

I do make oath, That I will be faithful and bear true allegiance to Her Majesty, her heirs and successors; and that I will, as in duty bound, honestly and faithfully defend Her Majesty, her heirs and successors, in person, crown, and dignity, against all enemies, and will observe and obey all orders of Her Majesty, her heirs and successors, and of the generals and officers set over me.

So help me GOD.

Witness my hand,

*Signature of the recruit.*

*Witness present.*

Declared and sworn before me }  
at this }  
day of one thou- }  
sand eight hundred and }  
at o'clock. }

*Signature of the Justice.*

#### DECLARATION to be made by a MARINE renewing his Service.

I do declare, That I am at present [or was, *as the case may be*], in the \_\_\_\_\_ division of the Royal Marine forces; that I enlisted on the \_\_\_\_\_ day of \_\_\_\_\_ for a term of \_\_\_\_\_ years; that I am of the age of \_\_\_\_\_ years; and that I will serve Her Majesty, her heirs and successors, as a marine, for a further term of \_\_\_\_\_ years [to be filled up with such number of years as shall be required to complete a total service of twenty-one years], provided my services should so long be required, and also for such further term, not exceeding two years, as shall be directed by the commanding officer on any foreign station.

*Signature of marine.*

*Signature of witness.*

Declared before me this }  
day of 18 . }

#### FORM of OATH to be taken by a MASTER whose Apprentice has absconded.

I of \_\_\_\_\_ do make oath, That I am by trade a \_\_\_\_\_, and that \_\_\_\_\_ was bound to serve as an apprentice to me in the said trade, by indenture dated the \_\_\_\_\_ day of \_\_\_\_\_ for the term of \_\_\_\_\_ years; and that the said \_\_\_\_\_ did on or about the \_\_\_\_\_ day of \_\_\_\_\_ last abscond and quit my service without my consent, and that to the best of my knowledge and belief the said \_\_\_\_\_ is aged about \_\_\_\_\_ years. Witness my

hand at the day of  
 and one thousand eight hundred  
 Sworn before me at }  
 this day of  
 one thousand  
 eight hundred and }

FORM of JUSTICE'S CERTIFICATE to be given to  
 the MASTER of an Apprentice.

to wit. } I one of Her Majesty's  
 justices of the peace of

certify, that of came  
 before me at the day  
 of one thousand eight hundred  
 and , and made oath that he was by  
 trade a , and that was  
 bound to serve as an apprentice to him in the  
 said trade, by indenture dated the day  
 of , for the term of years ;  
 and that the said apprentice did on or about the  
 day of abscond and quit the  
 service of the said without his con-  
 sent, and that to the best of his knowledge and  
 belief the said apprentice is aged about  
 years.

DESCRIPTION RETURN of who was apprehended [or surrendered himself,  
 as the case may be] on the day of and was committed to  
 confinement at on the day of as  
 deserter from the Royal Marines.

Age	- - - - -	
Height	- - - - -	Feet. Inches.
Complexion	- - - - -	
Hair	- - - - -	
Eyes	- - - - -	
Marks	- - - - -	
Probable date of enlistment, and where	- -	
Probable date of desertion, and from what place	- -	
Name and occupation and address of the person by whom or through whose means the deserter was apprehended and secured.		
* Particulars of the evidence on which the prisoner is committed; and showing whether he surrendered or was apprehended, and in what manner, and upon what grounds.		

\* It is important for the public service, and for the interest of the deserter, that this part of the return should be accurately filled up, and the details should be inserted by the magistrate in his own handwriting, or, under his direction, by his clerk.

I do hereby certify, that the prisoner has been duly examined before me as to the circumstance herein stated, and has declared in my presence that he† a deserter from the above-mentioned corps.

\_\_\_\_\_  
 Signature and address  
 of magistrate.  
 \_\_\_\_\_  
 Signature of prisoner.  
 \_\_\_\_\_  
 Signature of informant.

† Insert "is" or "is not," as the case may be.

I certify that I have inspected the prisoner, and consider him‡ for military service.

\_\_\_\_\_  
 Signature of military  
 medical officer, or of private  
 medical practitioner.

‡ Insert "fit" or "unfit," as the case may be, and, if unfit, state the cause of unfitness.

## CHAP. 9.

*The Peace Preservation (Ireland) Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Limitation of Act.*
3. *General definitions of terms.*

## PART I.

## AMENDMENT OF PEACE PRESERVATION ACT.

4. *Special definitions of terms.*
5. *Construction of Act.*
6. *Persons having game licences also to have licences to have and carry arms. Special licence to carry revolvers.*
7. *Punishment for carrying or having arms in proclaimed district.*
8. *15 & 16 Geo. 3. c. 21. and 1 & 2 Will. 4. c. 44. to apply to proclaimed districts.*
9. *Sect. 14 of 11 & 12 Vict. c. 2. repealed.*
10. *Powers of persons acting under search warrants.*
11. *In proclaimed districts no dealer shall sell gunpowder but to a licensed dealer or to a person licensed to keep arms.*
12. *In proclaimed districts arms to be sold, &c. only to persons licensed to have arms.*
13. *In proclaimed districts where felony committed justices may summon persons suspected of being capable of giving evidence in relation to such offence, and punish persons refusing to give evidence.*
14. *Persons charged with carrying or having arms may in certain cases be admitted to bail.*
15. *Power to issue warrant to search in proclaimed districts for documents in handwriting of persons suspected of writing threatening letters.*
16. *Provisions of Peace Preservation Act as to posting proclamations, &c. repealed.*
17. *Printed copies of every proclamation, &c. issued under Peace Preservation Act to be posted on or near the door of one place of public worship in every parish, &c. in district.*

## PART II.

*Special Proclamations.*

18. *Provisions of this part of this Act to apply to proclaimed districts when special proclamation issued by Lord Lieutenant.*
19. *Lord Lieutenant may by notice revoke licences to have or carry arms in a specially proclaimed district.*
20. *Printed copies of every special proclamation to be posted, &c.*
21. *Production of Dublin Gazette containing publication of any special proclamation to be conclusive evidence of facts, &c.*
22. *Copies of special proclamations to be laid before Parliament.*

*Arrest of Persons out at Night under suspicious Circumstances.*

23. *Power to arrest persons in district specially proclaimed found out at night under suspicious circumstances.*

*Closing of Public Houses by order of Lord Lieutenant.*

24. *Power to Lord Lieutenant by order to close public-houses in districts specially proclaimed.*

*Power to arrest Strangers.*

25. *Power to arrest strangers in district specially proclaimed.*

*Summary Proceedings in certain Cases.*

26. *Power to justices to punish persons charged with certain offences.*  
 27. *Persons accused may have assistance of counsel, &c.*  
 28. *Any metropolitan police magistrate or stipendiary magistrate may act alone.*

*Change of Venue.*

29. *Venue may be changed on suggestion of Attorney General.*

## PART III.

## GENERAL PROVISIONS.

*Newspapers.*

30. *Newspapers containing treasonable or seditious matters, &c. to be forfeited to Her Majesty.*  
 31. *Power to Lord Lieutenant to issue warrant to search for and seize newspapers, printing presses, types, &c.*  
 32. *Power to enter premises to execute warrant.*  
 33. *Power to maintain action in case of illegal search or seizure.*  
 34. *Term "newspaper."*

*Regulations as to Gunpowder and Fire-arms.*

35. *No person not licensed as a manufacturer shall sell gunpowder without a licence for that purpose.*  
 36. *Gunpowder makers and dealers, within thirty days after commencement of Act, and afterwards monthly, shall return account of their stock to chief officer of police, and keep books with accounts of sales, &c., to be inspected and stock examined.*  
 37. *Monthly account of arms sold, &c. shall be kept.*

*Power to apprehend Witnesses absconding.*

38. *Power of apprehending absconding witnesses.*

*Power to Grand Jury to present Compensation in certain Cases.*

39. *Power to grand jury to present compensation to be paid in certain cases of murder or maiming.*  
 40. *Recovery of penalties.*  
 41. *Declaration as to applicability of certain enactments.*

*Schedules.*

An Act to amend "The Peace Preservation (Ireland) Act, 1856," and for other purposes relating to the Preservation of Peace in Ireland.

(4th April 1870.)

WHEREAS it is expedient to amend the "Peace Preservation (Ireland) Act, 1856," and to make further and better provisions for the protection of life and property in Ireland:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "The Peace Preservation (Ireland) Act, 1870."

2. This Act shall apply to Ireland only, and shall continue in operation until the first day of August one thousand eight hundred and seventy-one.

3. In this Act—

The term "Lord Lieutenant" shall mean the Lord Lieutenant and the Lords Justices or other chief governors or governor of Ireland for the time being:

The terms "Chief Secretary" and "Under Secretary" shall mean respectively the Chief Secretary and Under Secretary of the Lord Lieutenant of Ireland:

The term "chief officer of police" shall mean within the police district of Dublin metropolis any one of the commissioners of police for the said district, and elsewhere any inspector, sub-inspector, head or other constable of the Royal Irish Constabulary acting as chief officer of constabulary within any district or town:

The term "county" shall extend to and include county of a city and county of a town, and a riding of a county, and a borough:

The term "grand jury" shall include every corporation, committee, council, and body authorized to make presentments:

The term "secretary to the grand jury" shall include town clerk:

The term "assizes" shall include presenting term:

The term "judge of assize," in the application of this Act to the county or county of the city of Dublin, shall include the Court of Queen's Bench at Dublin or any Judge of the said Court:

The term "petty sessions" shall include a divisional police office of Dublin metropolis:

The term "principal Act" shall mean the parts of the Act passed in the session of Parliament held in the eleventh and twelfth years of the reign of Her present Majesty, intituled "An Act for the better prevention of crime and outrage in certain portions of Ireland until the first day of December one thousand eight hundred and forty-nine, and to the end of the then next session of Parliament," which are continued by and are in force and operation under the Peace Preservation Act:

The term "Peace Preservation Act" shall mean "The Peace Preservation (Ireland) Act, 1856," and the Acts amending and continuing the same now in force:

The term "gunpowder" shall include gun-cotton and any other explosive matter used for the discharge of fire-arms:

The terms "constabulary" and "Royal Irish Constabulary" in the Peace Preservation Act, and in this Act, shall respectively include "Dublin Metropolitan Police:"

The terms "threatening letter" and "threatening notice" shall respectively mean and include any letter or notice written, posted, published, circulated, sent, delivered, or uttered contrary to the provisions of any of the enactments following; that is to say,

1 & 2 Will. 4. c. 44. s. 3.

24 & 25 Vict. c. 97. s. 50.

24 & 25 Vict. c. 100. s. 16.

#### PART I.

##### AMENDMENT OF PEACE PRESERVATION ACT.

4. In Part I. and Part II. of this Act the terms following shall have the meanings herein-after assigned to them respectively:

The term "proclaimed district" shall mean any county, county of a city, county of a town, or any barony or baronies, half barony or half baronies, in any county at large, or any district of less extent, to which the provisions of the Peace Preservation Act are declared to apply by proclamation under the said Act, so long as such proclamation shall be in force:

The term "notice" shall mean any notice published under the provisions of section eleven of the principal Act, requiring persons in a proclaimed district to deposit arms at a place therein named:

The term "arms" shall include any cannon, gun, revolver, pistol, or other fire-arm, or any part or parts of any cannon, gun, revolver, pistol, or other fire-arm, or any sword, cutlass, pike or bayonet, or any bullets, gunpowder, or ammunition.

5. Part I. of this Act, so far as is consistent with the tenor thereof, shall be construed as one with the Peace Preservation Act.

6. Notwithstanding anything in the principal Act, it shall not be lawful for—

Any person, although duly licensed to kill game, to carry arms, or, after notice, to have arms, in any proclaimed district, unless such person shall also have a licence granted to him under the Peace Preservation Act to carry and have arms in such district, or in some other proclaimed district; or for—

Any person (except justices of the peace, persons in Her Majesty's naval or military service, or in the coast guard service, or in the service of the revenue, or in the police or Royal Irish Constabulary, or special constables) to carry, or, after notice, to have any fire-arm of the description known as a revolver in any proclaimed district, although he shall have a licence granted to him under the Peace Preservation Act to carry and have arms within such district, unless such licence shall describe such fire-arm as a revolver and specially permit the carrying or having the same.

7. So much of section two of the Peace Preservation Act as enacts that the punishment to which parties are liable, on conviction, under the ninth and twelfth sections of the principal Act, shall thenceforth be reduced from imprisonment for any period not exceeding two years, with or without hard labour, to imprisonment for any period not exceeding one year, shall be and the same is hereby repealed.

Any person guilty of carrying or having arms contrary to the provisions of the said ninth and twelfth sections of the principal Act, or contrary to the provisions of the sixth section of this Act, or any of them, shall be liable on conviction thereof to be imprisoned, with or without hard labour, for any term not exceeding two years.

8. All the powers and provisions now in force of an Act passed in the Parliament of Ireland in the session of Parliament held in the fifteenth and sixteenth years of the reign of His late Majesty King George the Third, intituled "An



"Act to prevent and punish tumultuous risings of persons within this kingdom, and for other purposes therein mentioned," and also of another Act amending the same, passed in the Parliament of the United Kingdom in the second year of the reign of His late Majesty King William the Fourth, intituled "An Act to amend an Act passed in the Parliament of Ireland in the fifteenth and sixteenth years of the reign of His Majesty King George the Third, intituled 'An Act to prevent and punish tumultuous risings of persons within this kingdom, and for other purposes therein mentioned,'" shall extend and apply to every proclaimed district, and upon any trial or proceeding under the said last-recited Acts, or either of them, it shall not be necessary to prove that any such district was at the time of the commission of any offence or offences against the said last-recited Acts or either of them in a state of public or general disturbance, or insurrectionary movement, or that any such offence or offences, or the circumstances attending the same, was or were of an insurrectionary nature or character: Provided always, that the court or judge before which or whom any person or persons shall be tried for any offence against the provisions of section two of the said Act of the fifteenth and sixteenth years of the reign of His late Majesty King George the Third, shall, where such offence has been committed at any time after sunset and before sunrise, or before the hour of six in the forenoon though the sun should be arisen, have power and authority to sentence such prisoner to penal servitude for any term not exceeding seven years.

9. From and after the passing of this Act, section fourteen of the principal Act shall be and the same is hereby repealed.

10. It shall be lawful for any person to whom any warrant to search for and seize arms in any proclaimed district is directed, under the provisions of section thirteen of the principal Act, and for constables and other persons acting in their aid or assistance, within the space of three months next after the date of any such warrant, at such time and times and as often as they think fit, to enter into any house or place in order to execute such warrant, and in case admittance shall be refused to any such constables or persons as aforesaid, or shall not be obtained by them within a reasonable time after it has been first demanded, then to enter by force into such house or place in order to execute such warrant.

11. Every maker of or dealer in gunpowder, his agent or servant, shall, before selling or delivering any gunpowder to any person (except

justices of the peace, persons in Her Majesty's naval or military service, or in the coast guard service, or in the service of the revenue, or in the police or Royal Irish Constabulary, or special constables) in any proclaimed district, require such person to produce a licence authorizing him to make, deal in, or sell gunpowder, or to have or carry arms, or in case such gunpowder shall be wanted for the purpose of mining or blasting, a certificate, under the hands of one or more justices of the peace, that such gunpowder is to be applied to such purpose, and in the case of gunpowder required for mining or blasting there shall be endorsed on such certificate by the person selling or delivering the same the quantity so sold or delivered, and the time of sale, and such person shall sign his name thereto; and if any maker of or dealer in gunpowder, his agent or servant, shall sell or deliver any gunpowder to any person without the production of such a licence or certificate, or shall neglect to endorse on such certificate the quantity so sold or delivered and the time when, and to sign his name thereto, he shall for the first such offence be liable to a penalty not exceeding five pounds, and for any second offence he shall be liable to a further penalty not exceeding ten pounds.

12. It shall not be lawful for any person in a proclaimed district to sell to, or to make, mend, repair, or keep for any person (except justices of the peace, persons in Her Majesty's naval or military service, or in the coast guard service, or in the service of the revenue, or in the police or Royal Irish Constabulary, or special constables) not duly licensed to have arms any gun, revolver, pistol, or other fire-arm, or any part thereof; and if any person shall sell, make, mend, repair, or keep any gun, revolver, pistol, or other fire-arm, or part thereof, contrary to the provisions of this Act, every such offender shall be liable to a penalty not exceeding fifty pounds.

13. Where in any proclaimed district it shall appear that any felony or misdemeanor was committed, any justice of the peace in such district, although no person may be charged before him with the commission of such offence, shall have full power and authority to summon to the police office, or to the place where the petty sessions for the district in which said felony or misdemeanor has been committed are usually held, any person within his jurisdiction who, he shall have reason to believe, is capable of giving material evidence concerning any such felony or misdemeanor, and to examine such person on oath concerning any such felony or misdemeanor, and, if he shall see cause, to bind such person by recognizance to appear and give evidence at the next petty sessions, quarter sessions, or assizes. And in case any person who shall be summoned for that pur-

pose shall neglect or refuse to appear or shall refuse to take such oath, or having taken such oath shall refuse to answer such questions concerning the said felony or misdemeanor as shall then be put to him, or shall refuse to enter into such recognizance, such person may be dealt with in the manner provided by section thirteen of The Petty Sessions (Ireland) Act, 1851, in the case of a witness to whom a summons was issued and who neglects or refuses to attend or who refuses to give evidence or be bound by recognizance so to do.

Every summons under this section may be in the Form (I.) in the Schedule (A.) to this Act annexed, or to the like effect.

14. Where any person in a proclaimed district shall be charged with any offence contrary to the provisions of sections nine and twelve of the principal Act, or of section six of this Act, or of any of them, the admission to bail of such person shall be subject to the like conditions as the admission to bail under section sixteen of The Petty Sessions (Ireland) Act, 1851, of persons charged with any of the offences specified in sub-section one of the said section.

15. Whenever any information in writing and on oath is made before a justice that there is reasonable cause to suspect that any threatening letter or threatening notice was written by any person, and that there is or are to be found in any house or other place belonging to or under the control of such person in a proclaimed district any document or documents in his handwriting, it shall be lawful for such justice to issue a warrant to search such house or place for such document or documents; and every such warrant shall be in the Form (II.) in the Schedule (A.) to this Act annexed, or to the like effect, and shall be directed to and executed by the like parties, and in like manner, and subject to the like conditions in every respect, so far as the same are applicable, as if the same were a warrant to search issued under "The Summary Jurisdiction (Ireland) Act, 1851."

16. From and after the passing of this Act, so much of the Peace Preservation Act as relates to the posting of proclamations, abstracts, and notices shall be and the same is hereby repealed.

17. Printed copies of every proclamation, abstract, and notice under the provisions of the Peace Preservation Act shall be posted on, or near to, the door of one place of public worship, if there be such, in every parish, and of every police station and barrack within the district named in such proclamation, by some one or more of the constables or sub-constables of the Royal Irish Constabulary; and after any con-

stable or sub-constable has posted any such printed copies within such district, or any part thereof, he shall verify such posting by a solemn declaration annexed to a printed copy of such proclamation and abstract or notice, to be made before a justice of the peace in the Form (VII.) specified in the Schedule (A.) to this Act annexed, or to the like effect; and such constable or sub-constable shall deposit such printed copy and declaration annexed thereto with the clerk of the peace for the county within which such district or any part thereof is situate or his deputy; and the said clerk of the peace or deputy shall sign and date the same, and shall preserve the same amongst the records of the said county; and the production from the custody of such clerk of the peace or deputy of the said printed copy of such proclamation and abstract or notice, and declaration annexed thereto, or of a copy of the same respectively, signed and certified as a true copy by such clerk of the peace or deputy, shall in all proceedings, and for all purposes whatsoever, be conclusive evidence that the said proclamation and abstract or notice were or was duly posted within the district or part of the district in said declaration mentioned.

## PART II.

### *Special Proclamations.*

18. Whenever in the judgment of the Lord Lieutenant, by and with the advice of the Privy Council of Ireland, it is necessary for the better prevention of crime and outrage that the provisions of this part of this Act shall apply to any proclaimed district, it shall be lawful for the Lord Lieutenant, by and with the advice of the said Privy Council, to declare by proclamation, in this part of this Act called a special proclamation, to be published in the Dublin Gazette, that from and after a day to be named therein the provisions of this part of this Act shall be in force within the same; and thereupon such district shall be a district specially proclaimed within the meaning of this part of this Act: Provided always, that it shall be lawful for the Lord Lieutenant, by a new proclamation, to be made by and with the advice of the Privy Council of Ireland, to be published in the Dublin Gazette, to revoke any special proclamation issued under this part of this Act, as to the whole or any part of the district named in such special proclamation; and thereupon such special proclamation shall, from and after a day to be named in such new proclamation, stand and be revoked, so far as such new proclamation shall purport to revoke the same.

19. It shall be lawful for the Lord Lieutenant, by notice in writing, to be signed by the Chief or

Under Secretary and to be published in the Dublin Gazette, at any time or times to revoke all licences granted under the Peace Preservation Act to have or carry arms in any district specially proclaimed, and thereupon all such licences shall stand revoked, and shall be null and void to all intents and purposes.

Every such last-mentioned notice shall require every person to whom any licence thereby revoked was granted, and to whom a new licence shall not be granted under the said Peace Preservation Act, to deposit and leave on or before a day to be named in such notice, at a place or places to be named in such notice, or at the nearest police station or barrack, the arms for the having or carrying of which such revoked licence was granted; and such arms shall be kept, detained, and dealt with in the manner prescribed by section eleven of the principal Act in reference to arms deposited and left as therein mentioned.

Every person to whom any licence so revoked was granted, and to whom a new licence as aforesaid has not been granted, and who shall after the day named in such notice as aforesaid carry or have arms within such district, shall be guilty of carrying or having arms contrary to the provisions of the principal Act; provided always, that no person carrying any arms for the purpose only of depositing and leaving the same as hereinbefore mentioned shall by reason thereof be deemed or taken to be a person carrying or having any arms contrary to the provisions of the principal Act.

20. Printed copies of every special proclamation or notice under the authority of this part of this Act shall be posted on or near to the door of one place of public worship, if there be such, in every parish, and of every police station and barrack, within the district named in such special proclamation, by some one or more of the constables or sub-constables of the Royal Irish Constabulary, and at the foot of every copy of any such special proclamation so posted as aforesaid an abstract of the provisions of this part of this Act shall be printed for the information of all persons affected by the said enactments; and after any constable or sub-constable has posted any such printed copies within such district, or any part thereof, he shall verify such posting by a solemn declaration annexed to such printed copy of such special proclamation and abstract or notice, to be made before a justice of the peace in the Form (VIII.) specified in the Schedule (A.) to this Act annexed, or to the like effect, and such constable or sub-constable shall deposit such printed copy and declaration annexed thereto with the clerk of the peace for the county within which such district or any part thereof is situate, or his deputy, and the said clerk of the peace or deputy shall sign and date the same, and shall preserve the same

amongst the records of the said county, and the production from the custody of such clerk of the peace or deputy of the said printed copy of such special proclamation, and abstract or notice and declaration annexed thereto, or of a copy of the same respectively signed and certified as a true copy by such clerk of the peace or deputy, shall in all proceedings, and for all purposes whatsoever, be conclusive evidence that the said proclamation and abstract or notice were duly posted within the district or part of the district in said declaration mentioned.

21. The production of a printed copy of the Dublin Gazette, purporting to be printed and published by the Queen's authority, containing the publication of any special proclamation, under this part of this Act, shall be conclusive evidence of all such facts and circumstances as were or shall be necessary to authorize the issuing of any such special proclamation; and every such special proclamation shall be deemed and taken in all such courts respectively, to all intents and purposes whatsoever, to have been issued in conformity with this part of this Act.

22. A copy of every special proclamation issued under the authority of this Act shall be laid before each House of Parliament within fourteen days of the date of the same, if Parliament be then assembled, and if not then within fourteen days of the next subsequent meeting of Parliament.

*Arrest of Persons out at night under suspicious Circumstances.*

23. It shall be lawful for any justice of the peace to arrest and bring before him, or cause to be arrested or brought before him, or for any constable, peace officer, or other person to arrest and bring before any justice of the peace any person who, within any district specially proclaimed and under suspicious circumstances, shall be in the fields, streets, highways, or elsewhere out of his dwelling or place of abode at any time from one hour after sunset until sunrise, and any such justice may order such person to be brought or appear before the justices of the peace assembled at the next petty sessions for the district in which such person was arrested, and may in the meantime commit such person to gaol or admit him to bail as to such justice shall seem fit, and the justices at such petty sessions assembled shall examine the person so brought or appearing before them, who shall in such case be a competent witness, and shall examine such other witnesses and receive such evidence as may be brought before them touching the charge, and if upon such hearing the justices shall believe that such person was not out of his house upon some lawful occasion or business, such justices may commit him to gaol, there to be imprisoned,

with or without hard labour, for any period not exceeding six calendar months.

*Closing of Public Houses by order of Lord Lieutenant.*

24. It shall be lawful for the Lord Lieutenant, by order in writing to be signed by the Chief or Under Secretary, whenever he thinks fit, to direct that any person who, in any district specially proclaimed, keeps any house or place for the sale of wine, spirits, ale, beer, or cyder by retail, shall, during the period specified in such order, close such house or place at sunset or at such time after sunset as shall be specified in such order; and every such order shall be served upon the person to whom the same is directed by delivering to him a copy of such order, or if he cannot be conveniently met with by leaving such copy at the house or place to which such order relates; and any person upon whom such order shall be served, and who shall keep open such house or other place in violation of such order, shall on conviction be liable to a penalty not exceeding fifty pounds, and to imprisonment for any period not exceeding three calendar months.

*Power to arrest Strangers.*

25. It shall be lawful for any justice of the peace to arrest and bring before him, or cause to be arrested or brought before him, or for any constable, peace officer, or other person to arrest and bring before any justice of the peace, any stranger sojourning or wandering in any district specially proclaimed, and for such justice to examine him respecting his place of abode, the place from whence he came, his manner of livelihood, and his object or motive for remaining or coming into the county, city, or town in which he shall be found, and unless he shall answer to the satisfaction of such justice, or produce sufficient security for his good behaviour, such justice shall commit him to gaol, there to remain until he shall find such security as aforesaid, or until he shall be discharged by a justice of the peace: Provided always, that such justice shall, without delay, after such committal, transmit to the Lord Lieutenant a true and faithful report of such committal, and the grounds and reasons thereof, the amount of bail required, with the examination of the prisoner, and the reasons alleged by him why he should not be committed; which such justice is required to take down in writing, in order that such person may be detained or discharged, as to the Lord Lieutenant may seem right.

*Summary Proceedings in certain Cases.*

26. When any person is charged in any district specially proclaimed before any justices of the peace assembled at petty sessions with any offence contrary to any of the enactments speci-

fied in Part I. of the Schedule (B.) to this Act annexed, it shall be lawful for such justices, if they so think fit, to hear and determine the charge in a summary way, and if the person charged shall confess the same, or if such justices, after hearing the whole case for the prosecution and for the defence, shall find the charge to be proved, then it shall be lawful for such justices to convict the person charged, and commit him to gaol, there to be imprisoned, with or without hard labour, for any period not exceeding six calendar months; and if they find the offence not proved they shall dismiss the charge, and make out and deliver to the person charged a certificate under their hands, stating the fact of such dismissal; and every such conviction and certificate respectively may be in the Forms (III.) and (IV.) in the Schedule (A.) to this Act annexed, or to the like effect: Provided that if such justices are of opinion that the charge, from any circumstances, should be made the subject of prosecution by indictment, rather than be disposed of summarily, such justices shall, instead of summarily adjudicating thereon, deal with the case in all respects as if this Act had not been passed. If upon the hearing of the charge such justices shall be of opinion that there are circumstances in the case which render it inexpedient to inflict any punishment, they shall have power to dismiss the person charged, without proceeding to a conviction.

Every person who obtains a certificate of dismissal or is convicted under this Act shall be released from all further or other criminal proceedings for the same cause.

27. In every case of summary proceeding under this Act the person accused shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney.

28. Any magistrate appointed to act at the police courts of the police district of Dublin metropolis, and sitting at a police court within the said district, or any stipendiary magistrate sitting in petty sessions, may do alone all acts by this part of this Act authorized to be done by justices of the peace at petty sessions.

Where any justices of the peace at petty sessions are by this part of this Act authorized to do any act, such act may be done by any two or more of such justices, provided always, that one of such justices shall be a stipendiary magistrate.

*Change of Venue.*

29. Where any indictment found in any county specially proclaimed shall be removed by Certiorari into Her Majesty's Court of Queen's Bench at Dublin, and issue shall be joined on

such indictment, the said court, in term time or in the vacation, shall, upon the application of Her Majesty's Attorney General for Ireland in that behalf, order a suggestion to be entered upon the record directing such issue to be tried in such county as the court shall name, and specified in such suggestion other than the county in which such indictment was found, and such suggestion may be in the Form (V.) in the Schedule (A.) to this Act annexed or to the like effect, and shall have the same force and effect as any suggestion by which if made on the record the issue joined on any such indictment might now by law be tried in a county other than the county in which such indictment was found, and thereupon all proceedings may be taken according to the practice of the said court for the trial of the person charged in such indictment, and such person may be tried, in the county in that behalf specified in such suggestion, and such proceedings and trial, and every verdict given at such trial, and any judgment thereon, shall be valid and effectual to all intents and purposes as if such person had been tried in the county in which the offence charged in such indictment was committed.

In case of any such indictment so removed as aforesaid the days or times allowed or required according to the practice of the court for appearing or pleading, or in any notice of motion or in any writ of Habeas corpus, or in or for any other step or proceeding relating to such indictment, shall run in vacation as well as in term time, and any order may be made in reference to such indictment or the proceedings thereon by the said Court of Queen's Bench, or by a judge thereof in vacation as well as in term time; and for the purposes of this section the said Court of Queen's Bench shall have power to sit in vacation.

### PART III.

#### GENERAL PROVISIONS.

##### *Newspapers.*

30. Where it appears to the Lord Lieutenant that any newspaper printed or published, or purporting to be printed or published, in Ireland, after the passing of this Act, contains any treasonable or seditious engraving, matter, or expressions, or any incitements to the commission of any felony, or any engraving, matter, or expressions encouraging or propagating treason or sedition, or inciting to the commission of any felony, the Lord Lieutenant may cause a notice, in the Form (IX.) in the Schedule (A.) to this Act annexed, or to the like effect, to be published in the Dublin Gazette, and if such newspaper purports to be printed or published at any known

house in Ireland, a true copy of such notice shall be served at such house on the proprietor or publisher or printer of any such newspaper, either personally or by leaving the same with his wife, child, servant, or any other inmate aged sixteen years or upwards; provided that if such service cannot be effected, or admission into the said house or premises cannot be obtained, then such service may be effected by posting on some conspicuous part upon such house or premises a true copy of such notice between the hours of eight o'clock a.m. and six o'clock p.m.; and where any person shall have served or posted any such notice as aforesaid, he shall verify such service or posting by a solemn declaration annexed to a printed copy of the Dublin Gazette containing such notice, to be made before a justice of the peace in the Form X. specified in the Schedule (A.) to this Act annexed, or to the like effect; and such printed copy and declaration annexed thereto shall be deposited with the clerk of the peace for the county within which such house is situate, or his deputy; and the said clerk of the peace, or deputy, shall sign and date the same, and shall preserve the same amongst the records of the said county; and the production from the custody of such clerk of the peace, or deputy, of the said printed copy of such Gazette and declaration annexed thereto, or of a copy of the same respectively, signed and certified as a true copy by such clerk of the peace or deputy, shall in all proceedings, and for all purposes whatsoever, be conclusive evidence that the said notice was duly served or posted.

The production of a printed copy of the Dublin Gazette, purporting to be printed and published by the Queen's authority, containing the publication of any such notice as aforesaid, shall be conclusive evidence in all courts of justice in Ireland of all such facts and circumstances as were or shall be necessary to authorize the issuing of any such notice; and every such notice shall be deemed and taken in all such courts respectively, to all intents and purposes whatsoever, to have been issued in conformity with this part of this Act.

If, when seven days have expired in the case of a paper published at intervals of not less than a week, or two days in the case of a paper published at intervals of less than one week, after the publication of such notice and the service or posting thereof (if such there be), the said newspaper, or any newspaper belonging to or published by the same proprietor, printer, or publisher, or printed or published at the same premises, or under the same control or management, contains any treasonable or seditious engraving, matter, or expressions, or any incitements to the commission of any felony, or any engraving, matter, or expressions encouraging or propagating treason or sedition, or inciting to the commission of any

felony, all printing presses, engines, machinery, types, implements, utensils, paper, and other plant and materials used or employed, or intended to be used or employed, in or for the purpose of printing or publishing such newspaper, or found in or about any premises where such newspaper is printed or published, and all copies of such newspaper, wherever found in Ireland, shall be forfeited to Her Majesty.

Where after the passing of this Act any newspaper printed elsewhere than in Ireland is published or circulated in Ireland, and contains any such engraving, matter, expressions, or incitements as aforesaid, all copies of such newspaper, wherever found in Ireland, shall be forfeited to Her Majesty.

31. Where it appears to the Lord Lieutenant that any such newspaper after the publication and service of such notice, where such publication and service shall by this part of this Act be required, or that any such newspaper printed elsewhere than in Ireland and published or circulated in Ireland as aforesaid, contains any such engraving, matter, expressions, or incitements, as aforesaid, he may, by warrant under his hand in the Form (VI.) in the Schedule (A.) to this Act annexed, or to the like effect, empower any person or persons to whom such warrant is addressed, or his or their assistants, to enter upon any premises where the newspaper specified in said warrant, and containing such engraving, matter, expressions, or incitements as aforesaid, is printed or published, or where any printing press, engine, machine, types, implements, utensils, paper, or other plant or materials used or employed or intended to be used or employed, or suspected to be or to have been used or employed, for the printing or publishing of such newspaper as aforesaid, shall be, or shall be suspected to be, or where any copy of such newspaper as aforesaid is sold, distributed, or published, or suspected to be sold, distributed, or published, or kept or deposited for sale, distribution, or publication, or suspected to be kept or deposited for sale, distribution, or publication, and to search for, seize, and take away such printing presses, engines, machines, types, papers, implements, utensils, and plant, and every copy of such newspaper as aforesaid; and no action, save as herein-after mentioned, shall be brought or maintained against any person for the issuing of such warrant, or for any entry, search, or seizure, or other act, matter, or thing done in pursuance or under the authority of any such warrant as aforesaid: Provided always, that any chattels so seized shall be kept and detained until the determination of any action brought as herein-after mentioned; and if such action shall be determined in favour of the plaintiff, being the owner of or entitled to the possession of such chattels, such chattels shall be restored to such

plaintiff, and the jury shall take such restoration into consideration in mitigation of the damages to be awarded by them in such action.

32. Where any person duly authorized by warrant, as aforesaid, to enter any premises, or his assistants, shall demand admittance, and give notice of such warrant, and the door of any house, room, shop, warehouse, outhouse, building, or other premises shall not be opened within reasonable time after the making of such demand, it shall be lawful for any such person, or his assistants, to break open such door, and to enter thereat, for the purpose of making such search or seizure as aforesaid, and if any person shall refuse to permit any person duly authorized in that behalf, or his assistants, to enter such premises for the purpose of making any such search or seizure, or shall resist, obstruct, molest, prevent, or hinder any such person, or his assistants, as aforesaid, in the making of any such search, or in the seizing or taking away of any goods, chattels, articles, matters, and things which may be lawfully seized, or otherwise in the execution of any warrant under this Act, such person shall be deemed guilty of assaulting or wilfully resisting or obstructing a peace officer in the due execution of his duty, and on conviction shall be punished accordingly.

33. Where any person, who but for the provisions of this part of this Act would be entitled to maintain an action for any search or seizure made under the authority of a warrant under this part of this Act, feels aggrieved by any search or seizure made under the authority of any such warrant, he may within two calendar months after such search or seizure commence an action in any of Her Majesty's Superior Courts of Common Law at Dublin against the person or persons to whom such warrant is addressed, or any of the assistants of such person or persons, and may claim damages on the ground that such search or seizure was illegal, because a notice was not published or served according to the provisions of this part of this Act, or because the newspaper specified in such warrant and in reference to which such search or seizure was made did not contain any engraving, matter, expressions, or incitements, by reason of which such newspaper was forfeited to Her Majesty under the provisions of this part of this Act, or because the chattels seized were not copies of such newspaper, or because the printing presses, engines, machinery, types, implements, utensils, paper, plant, and materials were not used or employed or intended to be used or employed, or reasonably suspected to be or to have been used or employed or intended to be used or employed, in or for the purpose of printing or publishing such newspaper, or because the chattels seized were not found in

or about any premises where such newspaper as aforesaid was printed, published, sold, or distributed, or kept or deposited for publication, sale, or distribution, or reasonably suspected to be published, sold, or distributed, or kept for publication, sale, or distribution; and the defendant in such action may plead in defence to such action the defence in the Schedule (C.) to this Act annexed, or a defence to the like effect; and such action shall, except as is herein specially provided, be prosecuted, tried, and determined in every respect as any other action of tort brought in any of the said superior courts; and any copy or copies of the said newspaper published before the search or seizure complained of, and after the passing of this Act, may be given in evidence by the defendant in aid of the proof of the nature or tendency of the engraving, matter, expressions, or incitements used in the said newspaper, in reference to which the search or seizure complained of was made; and in the event of the jury finding that such notice was duly published and served as aforesaid, or that such newspaper did contain any such engraving, matter, expressions, or incitements as aforesaid, or that the chattels seized were copies of such newspaper, or that the printing presses, engines, machinery, types, implements, utensils, paper, plant, and materials were used or employed or intended to be used or employed, or reasonably suspected to be or to have been used or employed or intended to be used or employed, in or for the purpose of printing or publishing such newspaper, or that the chattels seized were found in or about any premises where such newspaper as aforesaid was printed, published, sold, or distributed, or kept or deposited for publication, sale, or distribution, or reasonably suspected to be published, sold, or distributed, or kept for publication, sale, or distribution, the defendant shall be entitled to a verdict, and to his costs of suit; and if they shall find that such notice was not duly published and served as aforesaid, or that such newspaper did not contain any such engraving, matter, expressions, or incitements as aforesaid, or that the chattels seized were not copies of such newspaper, or that the printing presses, engines, machinery, types, implements, utensils, paper, plant, and materials were not used or employed or intended to be used or employed, or reasonably suspected to be or to have been used or employed or intended to be used or employed, in or for the purpose of printing or publishing such newspaper, or that the chattels seized were not found in or about any premises where such newspaper as aforesaid was printed, published, sold, or distributed, or kept or deposited for publication, sale, or distribution, or reasonably suspected to be published, sold, or distributed, or kept for publication, sale, or distribution, the plaintiff shall be entitled to a verdict, and after final judgment to such damages

as may be lawfully awarded by the jury, together with his costs of suit according to the practice of the court applicable to such an action; and where any such judgment shall be given for the plaintiff, there shall be paid to the plaintiff out of moneys to be provided by Parliament the damages awarded him, together with his costs of suit.

34. The term "newspaper" in this part of this Act shall include two or more copies of a newspaper bearing the same name, whether published on the same day or on different days, and shall also include any series of newspapers, whether printed on one day or different days, or with one name or with different names.

*Regulations as to Gunpowder and Fire-arms.*

35. It shall not be lawful for any person not being duly licensed to manufacture gunpowder to deal in or sell gunpowder by retail or otherwise in Ireland, unless he shall have obtained a licence for that purpose from the Lord Lieutenant, or the chief or under secretary; and no such licence shall be granted without a certificate, under the hands and seals of two or more justices of the peace in petty sessions assembled for the district within which such person shall carry on such trade, that such person is a proper person to obtain the same, and that his stores are secure and fit for the purpose of keeping gunpowder; and any person who shall sell gunpowder, by retail or otherwise, without being licensed for that purpose, or without being licensed to manufacture gunpowder as aforesaid, shall for every such offence be liable to a penalty not exceeding fifty pounds, and all gunpowder, and every cask or vessel in which the same shall be contained, found in the possession of, or in any house or other place belonging to such person, shall be forfeited to the use of Her Majesty.

36. Every maker or manufacturer of gunpowder, and every person dealing in or selling the same, in Ireland, shall within thirty days after the passing of this Act return an account to the chief officer of police in the district in which he resides of all the stock of gunpowder then in his possession, describing the place or places where the same is kept, and the packages containing the same, and shall provide a book in which such quantity shall be entered, and shall from time to time, in the first week of every calendar month, make or cause to be made a like return and like entry; and every such maker or manufacturer or dealer in gunpowder, by wholesale or retail, shall also enter or cause to be entered in a separate book to be by him for that purpose provided, and distinguished by the name of "the book of sales," an account of every parcel of gunpowder sold or disposed of or delivered, with the time when and to whom; and it shall

be lawful for any justice of the peace, or any chief officer of police, or any person duly authorized by such justice or officer, at all reasonable times to have access to such books, and to examine the stock of such maker or seller of gunpowder, and compare and balance the same with the account kept in such books; and the several chief officers of police (except the chief officers of police within the police district of Dublin metropolis), to whom such accounts and returns shall be rendered, shall, from time to time, transmit the same to the inspector general of constabulary in Ireland as they may be by him directed; and if any such maker or manufacturer of, or dealer in, gunpowder shall not make such returns, or shall not truly make the same, or shall not keep such books, or shall not truly make, or cause to be made, such entries therein, or shall not, after demand, produce such books to any person hereby or by the said persons duly authorized as aforesaid, or shall not permit any such person to inspect the same, or to examine his stock, he shall, for the first offence, be liable to a penalty not exceeding ten pounds, and for any subsequent offence shall be liable to a penalty not exceeding twenty pounds.

37. Every person who shall make, repair, or sell any gun, pistol, revolver, or other fire-arm, or any part thereof, shall keep a book in which he shall enter or cause to be entered a monthly account of all such articles made, sold, or repaired by such person, and to or for whom and the respective times when the same were sold or repaired, and shall every month return a copy of such account to the chief officer of police in the district, and the chief officer of police of every district (except the police district of Dublin metropolis) shall transmit the same to the inspector general of constabulary in Ireland; and it shall be lawful for any justice of the peace, or chief officer of police, or any person duly authorized by such justice or officer, at all reasonable times, on demand, to have access to such book, to examine the same; and if any person making, repairing, or selling any such article shall not keep such book, or shall not truly enter or cause to be entered therein such account as aforesaid, or shall omit to make any such return as aforesaid, or shall not, after demand, produce such book to any person hereby or by the said persons duly authorized as aforesaid, or shall not permit such person to examine the same, he shall for the first offence be liable to a penalty not exceeding ten pounds, and for any subsequent offence be liable to a penalty not exceeding twenty pounds.

*Power to apprehend Witnesses absconding.*

38. Whenever any person shall be bound by recognizance to give evidence at any trial, or at the hearing of any charge, it shall be lawful for

any justice, if he shall see fit, upon the application of any person, and upon information being made in writing, and on oath by such person that the person so bound to give evidence is about to abscond or has absconded, to issue his warrant for the arrest of such person so bound to give evidence, and afterwards, when such person has been arrested upon being satisfied that the ends of justice would otherwise be defeated, to commit such person when so arrested to gaol until such trial or hearing, or until he shall produce another sufficient surety or other sufficient sureties, as the case may be, in like manner as before.

*Power to Grand Jury to present Compensation in certain Cases.*

39. Where it shall appear that any person has been murdered, maimed, or otherwise injured in his person, and that such murder, maiming, or injury is a crime of the character commonly known as agrarian, or arising out of any illegal combination or conspiracy, the grand jury of the county within which such murder, maiming, or injury shall have been committed shall, upon application, as herein-after directed, present such sum or sums of money as they shall think just and reasonable to be paid to the personal representative of the person so murdered, or to the person so maimed or injured, having regard to the rank, degree, situation, and circumstances of such person; such money to be raised off the county at large or the barony, half-barony, or other district in which such murder or maiming shall respectively have been perpetrated, at the discretion of such grand jury; and every such presentment shall be made and levied in the like manner, and shall, save as is by this Act expressly provided, be subject to the like conditions as any presentment made under the authority of section one hundred and six of an Act passed in the session of Parliament held in the sixth and seventh years of the reign of His late Majesty King William the Fourth, chapter one hundred and sixteen, intituled "An Act to consolidate and amend the Laws relating to the presentment of public money by Grand Juries in Ireland." No such presentment shall be traversed, but shall be subject to appeal as herein-after mentioned.

Applications may be made by the personal representative or one of the next of kin of any person murdered, or by any person maimed or injured, or by the Crown solicitor of the county, or by any person in that behalf authorized by the Lord Lieutenant.

Any person intending to apply for a presentment under the provisions of this section in respect of any murder, maiming, or injury, shall publish a notice stating his intention of so applying in the newspaper in which grand jury notices for the county are published, and shall serve notice



in writing of such murder, maiming, or injury, and of such his intention, upon the high constable of the barony, or upon two of the principal inhabitants of the parish wherein such offence shall have been committed, and at the nearest police station, fourteen days at least before the holding of the next assizes; and copies of such notice shall within the same time be affixed on or immediately adjacent to the doors of every police barrack within such barony, and every such person shall lodge with the high constable and secretary of the grand jury within the same time an application setting forth the loss or damage occasioned by such offence, and stating the time and place when and where such murder, maiming, or injury took place, and the amount of damage claimed, and such application shall be scheduled by the secretary of the grand jury, and shall be delivered by him to the grand jury at the next assizes.

Where between the commission of any such offence as aforesaid, and the holding of the next assizes, there shall not be sufficient time for the service of the notices herein-before required, such application shall be made at the assizes which shall be holden next but one after the time of the commission of such offence.

In case such grand jury shall refuse to make such presentment, or in case the person or persons applying for such presentment shall be dissatisfied with the amount presented, or in case any person chargeable with any of the moneys so presented shall be desirous of opposing such presentment, such applicant or ratepayer may appeal to one of the going judges of assize, who shall inquire into such application or presentment and the grounds and reasons for passing or refusing the same, and if such judge shall be reasonably satisfied that such presentment ought to be made, he shall affirm or make such presentment for such amount as to him shall seem fit, and the presentment shall be valid and effectual for such amount to all intents and purposes, and shall and may be levied after such assizes; but if the judge shall be of opinion that there was no

ground for such presentment he shall disallow or refuse to make the same, and the same, if passed by the grand jury, shall thereupon be null and void; and in case the judge shall be of opinion that the appeal was reasonable he may award the reasonable costs in that behalf to the appellant, which shall be added to the amount of such presentment if the same shall be affirmed or made, and if such presentment shall be disallowed or refused the amount of such costs shall be levied as if lawfully presented at such assizes by such grand jury off the county at large.

40. Every penalty recoverable under the provisions of this Act shall be recoverable in a summary way, with respect to the police district of Dublin metropolis subject and according to the provisions of any Act regulating the powers and duties of justices of the peace for such district or of the police of such district, and with respect to other parts of Ireland, before a justice or justices of the peace sitting in petty sessions, subject and according to the provisions of The Petty Sessions (Ireland) Act, 1851, and any Act amending the same, and with the like right and power of appeal as in the said Act is given and provided for, and shall be applied according to the provisions of The Fines Act (Ireland), 1851, or any Act amending the same.

41. It is hereby declared and enacted, that the parts of Acts in Part II. of the Schedule (B.) to this Act annexed do not and shall not apply to any information filed in Her Majesty's Court of Queen's Bench at Dublin, or to any indictment found in or removed by the writ of Certiorari into the said Court, or to the trial of any issue joined on any such information or indictment; and it is hereby declared and enacted, that the term the "court house of any county" as used in section four of The Juries Act (Ireland), 1868, does and shall, so far as relates to the county of Dublin, include the Court of Queen's Bench, or any Court within the building known as the Four Courts at Dublin.

#### SCHEDULE (A.)

##### FORMS.

##### FORM (I.)

##### Summons to Witness.

The Queen  
or  
persons unknown. } Petty Sessions District of  
of County

WHEREAS it appears that (1)

(1) *Set out felony or misdemeanor.*

This is to command you to appear as a witness  
before me at \_\_\_\_\_ on the  
day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, then  
and there to be examined before me touching the  
premises.

(Signed) \_\_\_\_\_ Justice of  
said county.  
This \_\_\_\_\_ day of \_\_\_\_\_ 187 .  
To \_\_\_\_\_  
of \_\_\_\_\_

## FORM (II.)

*Warrant to search.*

Petty Sessions District of  
County of

WHEREAS it appears on the oath of *A.B.* of *M.N.* there is reasonable cause to suspect that a threatening letter or notice <sup>(1)</sup> [as the case may be] was written by one *C.D.* of , and that there is to be found in the house or place [as the case may be] belonging to or under the control of the said *C.D.* [as the case may be] at <sup>(2)</sup>, some document or documents in the handwriting of the said *C.D.*

This is therefore to authorize and require you to enter into the said house or place [as the case may be], and to search for said document or documents, and to bring the same to me or some other justice.

(Signed) Justice of  
the said county.

This day of 187 .  
To  
of

<sup>(1)</sup> Set out particulars.  
<sup>(2)</sup> State particulars of house or place.

## FORM (III.)

*Conviction.*

to wit. } BE it remembered, that on the  
day of in the  
year of our Lord , at  
in the said [county], *A.B.*, being charged before  
us the undersigned of Her Majesty's  
justices of the peace for the said [county], is  
convicted before us, for that [he the said *A.B.*,  
&c., stating the offence, and the time and place  
when and where committed]; and we adjudge the  
said *A.B.* for his said offence to be imprisoned in  
the [gaol] at in the said [county],  
[and there be kept to hard labour] for the space  
of

Given under our hands and seals, the day  
and year first above mentioned, at  
in the [county] aforesaid.

*J.S.* (L.S.)  
*H.M.* (L.S.)

## FORM (IV.)

*Certificate of Dismissal.*

to wit. } WE of Her Majesty's justices  
of the peace for the [county] of  
certify, That on the day of  
in the year of our Lord  
at in the said [county] *A.B.* being  
charged before us, for that [he the said *A.B.*,  
stating the offence charged, and the time and place

when and where alleged to be committed], we did,  
having summarily adjudicated thereon, dismiss  
the said charge.

Given under our hands and seals, this  
day of at in the [county]  
aforesaid.

*J.S.* (L.S.)  
*H.M.* (L.S.)

## FORM (V.)

*Suggestion.*

In the Queen's Bench  
day, the day of  
The Queen } It is hereby directed by the Court  
" } that the issue [or issues] above  
joined shall be tried by a jury of the county  
of

## FORM (VI.)

*Warrant to search for and seize Printing Presses,  
Newspapers, &c.*

By the Lord Lieutenant General and  
General Governor of Ireland.

WHEREAS a certain newspaper, to wit

<sup>(1)</sup> contains <sup>(2)</sup>

This is to authorize and require you and your  
assistants to enter into <sup>(3)</sup> and to  
search for <sup>(4)</sup>

and to seize and take away all <sup>(5)</sup>

which you shall there find.

This day of 187 .  
To  
of

<sup>(1)</sup> State name of newspaper.  
<sup>(2)</sup> Describe or state engraving, matter, expressions, or  
incitements on account of which search or seizure directed.  
<sup>(3)</sup> Describe premises.  
<sup>(4)</sup> State articles to be searched for.  
<sup>(5)</sup> State articles to be seized.

## FORM (VII.)

*Posting of Proclamations, &c.**Form of Solemn Declaration.*

I, *A.B.*, (constable or sub-constable) do solemnly  
and sincerely declare, that on the  
day of and [here insert the dates] I  
posted on or near to the doors of one place of  
public worship [if there be such] of every parish  
and of every police station and barrack within  
that part of the district named or referred to in  
the annexed (proclamation or notice), known and  
called by the name of [here insert name of barony,  
half-barony, townland, &c.], true copies of the  
annexed (proclamation and abstract or notice);

and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act passed in the sixth year of the reign of His Majesty King William the Fourth, chapter sixty-two, for the abolition of unnecessary oaths.

(Signed) A.B.  
Made and subscribed before me this  
day of in the year 187 .  
(Signed) C.D., Justice of the Peace.

#### FORM (VIII.)

##### Posting of Special Proclamation.

##### Form of Solemn Declaration.

I, A.B., (constable or sub-constable) do solemnly and sincerely declare, that on the day of and [here insert the dates] I posted on or near to the doors of one place of public worship [if there be such] of every parish, and of every police station and barrack within that part of the district named or referred to in the annexed (special proclamation or notice), known and called by the name of [here insert name of barony, half-barony, townland, &c.], true copies of the annexed (proclamation and abstract or notice); and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act passed in the sixth year of the reign of His Majesty King William the Fourth, chapter sixty-two, for the abolition of unnecessary oaths.

(Signed) A.B.  
Made and subscribed before me this  
day of in the year 187 .  
(Signed) C.D., Justice of the Peace.

#### FORM (IX.)

##### Notice under provisions of Section 30 of this Act.

By the Lord Lieutenant General and General Governor of Ireland.

WHEREAS a certain newspaper, to wit [state name of newspaper], contains [describe or state in terms of Act as graving, matter, expressions, or incitements in reference to which notice is given].

This is to give notice to all whom it may concern, and to give all such persons warning according to the provisions, and for the purposes of Section 30 of the Peace Preservation (Ireland) Act, 1870.

This day of 187 .

#### FORM (X.)

##### Service or posting of Notices under Section 30 of this Act.

##### Form of Solemn Declaration.

I, A.B., do solemnly and sincerely declare, that on the day of and [here insert the dates] I served at or posted upon [describe house] a true copy of the notice marked A in the annexed copy of the "Dublin Gazette;" and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act passed in the sixth year of the reign of His Majesty King William the Fourth, chapter sixty-two, for the abolition of unnecessary oaths.

(Signed) A.B.  
Made and subscribed before me this  
day of in the year 187 .  
(Signed) C.D., Justice of the Peace.

#### SCHEDULE (B.)

##### PART I.

##### ENACTMENTS referred to in Section 26 of this Act.

15 & 16 Geo. 3. (Irish), c. 21. s. 2.  
60 Geo. 3. & 1 Geo. 4. c. 1. s. 1.  
Principal Act (11 & 12 Vict. c. 2.), ss. 9 and 12.  
Section 6 of this Act.

##### PART II.

##### PARTS of ACTS referred to in Section 41 of this Act.

3 & 4 Will. 4. c. 91. ss. 12 and 19.  
16 & 17 Vict. c. 113. ss. 109, 110, 111, and 112.

#### SCHEDULE (C.)

##### Defence in an Action under Section 33 of this Act.

A.B., Plaintiff.	}	Court of	day, the	187 .
C.D., Defendant.				
		day of		

THE said A.B. appears and takes defence to the action of the said C.D., and says, that notice respecting the said (1) was duly published and served in accordance with the provisions of Part III. of the Peace Preservation (Ireland) Act, 1870, and the defendant says that the acts in the summons and plaint complained of were done under and by virtue of a certain

warrant under the hand of the Lord Lieutenant of Ireland, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, and issued under the authority of Part III. of the Peace Preservation (Ireland) Act, 1870, in respect of a certain newspaper specified in such warrant, to wit \_\_\_\_\_<sup>(1)</sup> and which newspaper the defendant avers contained

<sup>(2)</sup>, the particulars of which are endorsed hereon, and the defendant says that the chattels

<sup>(1)</sup> State name of newspaper.

<sup>(2)</sup> State in terms of Act the nature of the matter on account of which warrant issued.

seized were \_\_\_\_\_<sup>(3)</sup>, and therefore he defends the action.

#### *Endorsement of Particulars.*

[Describe or state the engraving, matter, expressions, or incitements, as in Warrant.]

<sup>(3)</sup> State in terms of Act, e. gr., copies of such newspaper or printing presses, &c., (as the case may be) used or employed, or intended to be used or employed, or reasonably suspected to be or to have been used or employed (according to the alleged facts), or found in or about certain premises (to wit) where such newspaper was printed or published or sold (as the case may be).

### CHAP. 10.

#### *The Coinage Act, 1870.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Definitions of terms.*
3. *Standard of coins.*
4. *Legal tender.*
5. *Prohibition of other coins and tokens.*
6. *Contracts, &c. to be made in currency.*
7. *Defacing light gold coin.*
8. *Coining of bullion taken to the Mint.*
9. *Purchase of bullion.*
10. *Payment of profits, &c. to Exchequer.*
11. *Regulations by proclamation.*
12. *Trial of the pyx.*
13. *Regulations by Treasury.*

##### *Master and Officers of Mint.*

14. *Master of Mint.*
15. *Deputy masters and officers.*

##### *Standard Trial Plates and Weights.*

16. *Custody, &c. of standard trial plates.*
17. *Standard weights for coin.*

##### *Legal Proceedings.*

18. *Summary Procedure.*

##### *Miscellaneous.*

19. *Extent of Act.*
20. *Repeal of Acts and parts of Acts in second schedule.*  
*Schedules.*

An Act to consolidate and amend the law relating to the Coinage and Her Majesty's Mint. (4th April 1870.)

WHEREAS it is expedient to consolidate and amend the law relating to the Coinage and Her Majesty's Mint:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as "The Coinage Act, 1870."

**2. In this Act—**

The term "Treasurer" means the Lord High Treasurer for the time being, or the Commissioners of Her Majesty's Treasury for the time being, or any two of them;

The term "the Mint" means, except as expressly provided, Her Majesty's Royal Mint in England;

The term "British possession" means any colony, plantation, island, territory, or settlement within Her Majesty's dominions and not within the United Kingdom; and

The term "person" includes a body corporate.

**3.** All coins made at the mint of the denominations mentioned in the first schedule to this Act shall be of the weight and fineness specified in that schedule, and the standard trial plates shall be made accordingly.

If any coin of gold, silver, or bronze, but of any other denomination than that of the coins mentioned in the first schedule to this Act, is hereafter coined at the Mint, such coin shall be of a weight and fineness bearing the same proportion to the weight and fineness specified in that schedule as the denomination of such coin bears to the denominations mentioned in that schedule.

Provided that in the making of coins a remedy (or variation from the standard weight and fineness specified in the said first schedule) shall be allowed of an amount not exceeding the amount specified in that schedule.

**4.** A tender of payment of money, if made in coins which have been issued by the Mint in accordance with the provisions of this Act, and have not been called in by any proclamation made in pursuance of this Act, and have not become diminished in weight, by wear or otherwise, so as to be of less weight than the current weight, that is to say, than the weight (if any) specified as the least current weight in the first schedule to this Act, or less than such weight as may be declared by any proclamation made in pursuance of this Act, shall be a legal tender,—

In the case of gold coins for a payment of any amount:

In the case of silver coins for a payment of an amount not exceeding forty shillings, but for no greater amount:

In the case of bronze coins for a payment of an amount not exceeding one shilling, but for no greater amount.

Nothing in this Act shall prevent any paper currency which under any Act or otherwise is a legal tender from being a legal tender.

**5.** No piece of gold, silver, copper, or bronze, or of any metal or mixed metal, of any value whatever, shall be made or issued, except by the

Mint, as a coin or a token for money, or as purporting that the holder thereof is entitled to demand any value denoted thereon. Every person who acts in contravention of this section shall be liable on summary conviction to a penalty not exceeding twenty pounds.

**6.** Every contract, sale, payment, bill, note, instrument, and security for money, and every transaction, dealing, matter, and thing whatever relating to money, or involving the payment of or the liability to pay any money, which is made, executed, or entered into, done or had, shall be made, executed, entered into, done and had according to the coins which are current and legal tender in pursuance of this Act, and not otherwise, unless the same be made, executed, entered into, done or had according to the currency of some British possession or some foreign state.

**7.** Where any gold coin of the realm is below the current weight as provided by this Act, or where any coin is called in by any proclamation, every person shall, by himself or others, cut, break, or deface any such coin tendered to him in payment, and the person tendering the same shall bear the loss.

If any coin cut, broken, or defaced in pursuance of this section is not below the current weight, or has not been called in by any proclamation, the person cutting, breaking, or defacing the same shall receive the same in payment according to its denomination. Any dispute which may arise under this section may be determined by a summary proceeding.

**8.** Where any person brings to the Mint any gold bullion, such bullion shall be assayed and coined, and delivered out to such person, without any charge for such assay or coining, or for waste in coinage:

Provided that—

(1.) If the fineness of the whole of the bullion so brought to the Mint is such that it cannot be brought to the standard fineness under this Act of the coin to be coined thereout, without refining some portion of it, the Master of the Mint may refuse to receive, assay, or coin such bullion:

(2.) Where the bullion so brought to the Mint is finer than the standard fineness under this Act of the coin to be coined thereout, there shall be delivered to the person bringing the same such additional amount of coin as is proportionate to such superior fineness.

No undue preference shall be shown to any person under this section, and every person shall have priority according to the time at which he brought such bullion to the Mint.

9. The Treasury may from time to time issue to the Master of the Mint, out of the growing produce of the Consolidated Fund, such sums as may be necessary to enable him to purchase bullion in order to provide supplies of coin for the public service.

10. All sums received by the Master of the Mint, or any deputy master or officer of the Mint, in payment for coin produced from bullion purchased by him, and all fees and payments received by the master or any deputy master or officer of the Mint as such, shall (save as otherwise provided in the case of any branch mint in a British possession by a proclamation respecting such branch mint) be paid into the receipt of the Exchequer, and carried to the Consolidated Fund.

11. It shall be lawful for Her Majesty, with the advice of Her Privy Council, from time to time by proclamation to do all or any of the following things; namely,

- (1.) To determine the dimension of and design for any coin:
- (2.) To determine the denominations of coins to be coined at the Mint:
- (3.) To diminish the amount of remedy allowed by the first schedule to this Act in the case of any coin:
- (4.) To determine the weight (not being less than the weight (if any) specified in the first schedule to this Act) below which a coin, whether diminished in weight by wear or otherwise, is not to be a current or a legal tender:
- (5.) To call in coins of any date or denomination, or any coins coined before the date in the proclamation mentioned:
- (6.) To direct that any coins, other than gold, silver, or bronze, shall be current and be a legal tender for the payment of any amount not exceeding the amount specified in the proclamation, and not exceeding five shillings:
- (7.) To direct that coins coined in any foreign country shall be current, and be a legal tender, at such rates, up to such amounts, and in such portion of Her Majesty's dominions as may be specified in the proclamation; due regard being had in fixing those rates to the weight and fineness of such coins, as compared with the current coins of this realm:
- (8.) To direct the establishment of any branch of the Mint in any British possession, and impose a charge for the coinage of gold thereat; determine the application of such charge; and determine the extent to which such branch is to be deemed part of the Mint, and to which

coins issued therefrom are to be current and be a legal tender, and to be deemed to be issued from the Mint:

- (9.) To direct that the whole or any part of this Act shall apply to and be in force in any British possession, with or without any modifications contained in the proclamation:
- (10.) To regulate any matters relative to the coinage and the Mint within the present prerogative of the Crown which are not provided for by this Act:
- (11.) To revoke or alter any proclamation previously made.

Every such proclamation shall come into operation on the date therein in that behalf mentioned, and shall have effect as if it were enacted in this Act.

12. For the purpose of ascertaining that coins issued from the Mint have been coined in accordance with this Act, a trial of the pyx shall be held at least once in every year in which coins have been issued from the Mint.

It shall be lawful for Her Majesty, with the advice of Her Privy Council, from time to time, by order, to make regulations respecting the trial of the pyx and all matters incidental thereto, and in particular respecting the following matters; viz.,

- (1.) The time and place of the trial:
- (2.) The setting apart out of the coins issued by the Mint certain coins for the trial:
- (3.) The summoning of a jury of not less than six out of competent freemen of the mystery of goldsmiths of the city of London or other competent persons:
- (4.) The attendance at the trial of the jury so summoned, and of the proper officers of the Treasury, the Board of Trade, and the Mint, and the production of the coins so set apart, and of the standard trial plates and standard weights:
- (5.) The proceedings at and conduct of the trial, including the nomination of some person to preside thereat, and the swearing of the jury, and the mode of examining the coins:
- (6.) The recording and the publication of the verdict, and the custody of the record thereof, and the proceedings (if any) to be taken in consequence of such verdict.

Every such order shall come into operation on the date therein in that behalf mentioned, and shall have effect as if it were enacted in this Act, but may be revoked or altered by any subsequent order under this section.

13. The Treasury may from time to time do all or any of the following things:

- (1.) Fix the number and duties of the officers of and persons employed in the Mint:

- (2.) Make regulations and give directions (subject to the provisions of this Act and any proclamation made thereunder) respecting the general management of the Mint, and revoke and alter such regulations and directions.

*Master and Officers of Mint.*

14. The Chancellor of the Exchequer for the time being shall be the master, worker, and warden of Her Majesty's Royal Mint in England, and governor of the Mint in Scotland.

Provided that nothing in this section shall render the Chancellor of the Exchequer incapable of being elected to or of sitting or voting in the House of Commons, or vacate the seat of the person who at the passing of this Act holds the office of Chancellor of the Exchequer.

All duties, powers, and authorities imposed on or vested in or to be transacted before the master of the Mint may be performed and exercised by or transacted before him or his sufficient deputy.

15. The Treasury may from time to time appoint deputy masters and other officers and persons for the purpose of carrying on the business of the Mint in the United Kingdom or elsewhere, and assign them their duties, and award them their salaries.

The master of the Mint may from time to time promote, suspend, and remove any such deputy masters, officers, and persons.

*Standard Trial Plates and Weights.*

16. The standard trial plates of gold and silver used for determining the justness of the gold and silver coins of the realm issued from the Mint, which now exist or may hereafter be made, and all books, documents, and things used in connexion therewith or in relation thereto, shall be in the custody of the Board of Trade, and shall be kept in such places and in such manner as the Board of Trade may from time to time direct; and the performance of all duties in relation to such trial plates shall be part of the business of the Standard weights and measures Department of the Board of Trade.

The Board of Trade shall from time to time, when necessary, cause new standard trial plates to be made and duly verified, of such standard fineness as may be in conformity with the provisions of this Act.

17. The standard weights for weighing and testing the coin of the realm shall be placed in the custody of the Board of Trade, and be kept in such places and in such manner as the Board of Trade may from time to time direct; and the performance of all duties in relation to such standard weights shall be part of the business of the Standard weights and measures Department of the Board of Trade.

VOL. XLVIII.—LAW JOUR. STAT.

The Board of Trade shall from time to time cause weights of each coin of the realm for the time being, and of multiples of such of those weights as may be required, to be made and duly verified; and those weights, when approved by Her Majesty in Council, shall be the standard weights for determining the justness of the weight of and for weighing such coin.

The master of the Mint shall from time to time cause copies to be made of such standard weights, and once at least in every year the Board of Trade and the master of the Mint shall cause such copies to be compared and duly verified with the standard weights in the custody of the Board of Trade.

All weights which are not less in weight than the weight prescribed by the first schedule to this Act for the lightest coin, and are used for weighing coin, shall be compared with the said standard weights, and if found to be just shall, on payment of such fee, not exceeding five shillings, as the Board of Trade from time to time prescribe, be marked by some officer of the Standard weights and measures Department of the Board of Trade with a mark approved of by the Board of Trade, and notified in the London Gazette; and a weight which is required by this section to be so compared, and is not so marked, shall not be deemed a just weight for determining the weight of gold and silver coin of the realm.

If any person forges or counterfeits such mark, or any weight so marked, or wilfully increases or diminishes any weight so marked, or knowingly utters, sells, or uses any weight with such counterfeit mark, or any weight so increased or diminished, or knowingly uses any weight declared by this section not to be a just weight, such person shall be liable to a penalty not exceeding fifty pounds.

All fees paid under this section shall be paid into the Exchequer, and carried to the Consolidated Fund.

*Legal Proceedings.*

18. Any summary proceeding under this Act may be taken, and any penalty under this Act may be recovered,—

In England, before two justices of the peace in manner directed by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Act amending the same.

In Scotland, in manner directed by The Summary Procedure Act, 1864.

In Ireland, so far as respects Dublin, in manner directed by the Acts regulating the powers of justices of the peace or the police of Dublin metropolis, and elsewhere in manner directed by

The Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

In any British possession, in the courts, and before such justices or magistrates, and in the manner in which the like proceedings and penalties may be taken and recovered by the law of such possession, or as near thereto as circumstances admit, or in such other courts, or before such other justices or magistrates, or in such other manner as any Act or Ordinance having the force of law in such possession may from time to time provide.

#### Miscellaneous.

19. This Act, save as expressly provided by this Act, or by any proclamation made thereunder, shall not extend to any British possession.

20. The Acts mentioned in the first part of the second schedule to this Act are hereby repealed to the extent in the third column of such schedule mentioned, and those mentioned in the second part of the same schedule are hereby repealed entirely.

Provided that,—

(1.) This repeal shall not affect anything already done or suffered, or any right already acquired or accrued :

(2.) All weights for weighing coin which have before the passing of this Act been marked at the Mint or by any proper officer shall be deemed to have been marked under this Act :

(3.) Every branch of the Mint which at the passing of this Act issues coins in any British possession shall, until the date fixed by any proclamation made in pursuance of this Act with respect to such branch Mint, continue in all respects to have the same power of issuing coins and be in the same position as if this Act had not passed, and coins so issued shall be deemed for the purpose of this Act to have been issued from the Mint :

(4.) The said Acts (unless relating to a branch Mint, and unless in the said schedule expressly otherwise mentioned,) are not repealed so far as they apply to any British possession to which this Act does not extend until a proclamation directing that this Act or any part thereof, with or without any modification contained in the proclamation, shall be in force in such British possession comes into operation.

### SCHEDULES.

#### FIRST SCHEDULE.

Denomination of Coin.	Standard Weight.		Least Current Weight.		Standard Fineness.	Remedy Allowance.		
	Imperial Weight.	Metric Weight.	Imperial Weight.	Metric Weight.		Weight per Piece.		Millesimal Fineness.
						Grains.	Grams.	
<b>GOLD:</b>								
Five Pound - -	616·87239	39·94023	612·50000	39·68935	Eleven-twelfths fine gold, one-twelfth alloy; or millesimal fineness 916·66.	1·00000	0·06479	0·002
Two Pound - -	246·54896	15·97611	245·00000	15·87574		0·40000	0·02592	
Sovereign - -	123·27447	7·98806	122·50000	7·93787		0·20000	0·01296	
Half Sovereign -	61·63723	3·99402	61·12500	3·96983		0·10000	0·00648	
<b>SILVER:</b>								
Crown - - -	436·36363	28·27590	—	—	Thirty-seven-fortieths fine silver, three-fortieths alloy; or millesimal fineness 925·	1·81818	0·11781	0·004
Half Crown - -	218·18181	14·13795	—	—		0·90909	0·05890	
Florin - - -	174·54545	11·81036	—	—		0·72727	0·04712	
Shilling - - -	87·27272	5·66518	—	—		0·36363	0·02356	
Sixpence - - -	43·63636	2·82759	—	—		0·18181	0·01178	
Groat or Fourpence -	29·09090	1·88506	—	—		0·12121	0·00785	
Threepence - - -	21·81818	1·41379	—	—		0·09090	0·00589	
Twopence - - -	14·54545	0·94253	—	—		0·06060	0·00392	
Penny - - -	7·27272	0·47126	—	—		0·03030	0·00196	
<b>BRONZE:</b>								
Penny - - -	145·83333	9·44984	—	—	Mixed metal, copper, tin, and zinc.	2·91666	0·18899	None.
Halfpenny - - -	87·50000	5·66990	—	—		1·75000	0·11339	
Farthing - - -	43·75000	2·83495	—	—		0·87500	0·06699	

The weight and fineness of the coins specified in this Schedule are according to what is provided by the Act fifty-six George the Third, chapter sixty-eight, that the gold coin of the United Kingdom of Great Britain and Ireland should hold such weight and fineness as were prescribed in the then existing Mint indenture, (that is to say,) that there should be nine hundred and thirty-four sovereigns and one ten shilling piece contained in twenty pounds weight troy of standard gold, of the fineness at the trial of the same of twenty-two carats fine gold and two carats of alloy in the pound weight troy; and further, as regards silver coin, that there should be sixty-six shillings in every pound troy of standard silver of the fineness of eleven ounces two pennyweights of fine silver and eighteen pennyweights of alloy in every pound weight troy.



## SECOND SCHEDULE.

## FIRST PART.

*Acts partly repealed.*

Year and Chapter.	Title.	Extent of Repeal.
2 Hen. 6. c. 17.*	For regulating and ascertaining the fineness of silver work.	So much as relates to the master of the Mint. Section thirteen.
29 & 30 Vict. c. 82.	An Act to amend the Acts relating to the standard weights and measures, and to the standard trial pieces of the coin of the realm.	

\* c. 14. in Buffhead.

## SECOND PART.

*Acts wholly repealed.*

Year and Chapter.	Title.
18 & 19 Cha. 2. c. 5.*	- An Act for encouraging of coinage.
†6 Anne, c. 57.†	- An Act for ascertaining the rates of foreign coins in Her Majesty's plantations in America.
†13 Geo. 3. c. 57. -	- An Act to explain and amend an Act made in the fourth year of His present Majesty, intituled "An Act to prevent paper bills of credit hereafter to be issued in any of His Majesty's colonies or plantations in America from being declared to be a legal tender in payments of money, and to prevent the legal tender of such bills as are now subsisting from being prolonged beyond the periods limited for calling in and sinking the same."
14 Geo. 3. c. 70. -	- An Act for applying a certain sum of money for calling in and recoining the deficient gold coin of this realm; and for regulating the manner of receiving the same at the Bank of England, and of taking there an account of the deficiency of the said coin and making satisfaction for the same; and for authorizing all persons to cut and deface all gold coin that shall not be allowed to be current by His Majesty's proclamation.
14 Geo. 3. c. 92. -	- An Act for regulating and ascertaining the weights to be made use of in weighing the gold and silver coin of this kingdom.
15 Geo. 3. c. 30. -	- An Act for allowing the officer appointed to mark or stamp the weights to be made use of in weighing the gold and silver coin of this kingdom, in pursuance of an Act made in the last session of Parliament, to take certain fees in the execution of his office.
39 Geo. 3. c. 94. -	- An Act to ascertain the salary of the master and worker of His Majesty's Mint.
52 Geo. 3. c. 138. -	- An Act for the further prevention of the counterfeiting of silver tokens issued by the Governor and Company of the Bank of England called dollars, and of silver pieces issued and circulated by the said Governor and Company called tokens, and for the further prevention of frauds practised by the imitation of the notes or bills of the said Governor and Company.

\* 18 Cha. 2. in Buffhead.

† c. 30. in Buffhead.

† Repealed as to the whole of Her Majesty's dominions upon the passing of this Act.

Year and Chapter.	Title.
52 Geo. 3. c. 157.	- An Act to prevent the issuing and circulating of pieces of gold and silver or other metal, usually called tokens, except such as are issued by the Banks of England and Ireland respectively.
54 Geo. 3. c. 4. -	- An Act to continue until six weeks after the commencement of the next session of Parliament an Act passed in the last session of Parliament, intituled "An Act to continue and amend an Act of the present session, " to prevent the issuing and circulating of pieces of gold and silver or " other metal, usually called tokens, except such as are issued by the " Banks of England and Ireland respectively."
56 Geo. 3. c. 68. -	- An Act to provide for a new silver coinage, and to regulate the currency of the gold and silver coin of this realm.
57 Geo. 3. c. 46. -	- An Act to prevent the issuing and circulating of pieces of copper or other metal usually called tokens.
57 Geo. 3. c. 67. -	- An Act to regulate certain offices, and abolish others, in His Majesty's Mints in England and Scotland respectively.
57 Geo. 3. c. 113. -	- An Act to prevent the further circulation of dollars and tokens issued by the Governor and Company of the Bank of England for the convenience of the public.
6 Geo. 4. c. 79. -	- An Act to provide for the assimilation of the currency and monies of account throughout the United Kingdom of Great Britain and Ireland.
6 Geo. 4. c. 98. -	- An Act to prevent the further circulation of tokens issued by the Governor and Company of the Bank of Ireland for the convenience of the public, and for defraying the expense of exchanging such tokens.
1 & 2 Will. 4. c. 10.	- An Act to reduce the salary of the master and worker of His Majesty's Mint.
7 Will. 4. & 1 Vict. c. 9. -	- An Act to amend several Acts relating to the Royal Mint.
12 & 13 Vict. c. 41. -	- An Act to extend an Act of the fifty-sixth year of King George the Third, for providing for a new silver coinage, and for regulating the currency of the gold and silver coin of this realm.
22 & 23 Vict. c. 30.	- An Act to extend the enactments relating to the copper coin to coin of mixed metal.
26 & 27 Vict. c. 74.	- An Act to enable Her Majesty to declare gold coins to be issued from Her Majesty's Branch Mint at Sydney, New South Wales, a legal tender for payments; and for other purposes relating thereto.
29 & 30 Vict. c. 65.	- An Act to enable Her Majesty to declare gold coins to be issued from Her Majesty's Colonial Branch Mints a legal tender for payments; and for other purposes relating thereto.

## CHAP. 11.

*Dublin Collector-General of Rates Franchise.*

## ABSTRACT OF THE ENACTMENTS.

1. *Collector-General of Rates, and persons employed in his office, may vote at parliamentary elections for the city of Dublin.*

An Act to enable the officers employed in the Collector-General of Rates office in the city of Dublin to vote at Parliamentary Elections for that city.  
(12th May 1870.)

WHEREAS an Act was passed in the session of Parliament holden in the thirty-first and thirty-second years of the reign of Her present Majesty, intituled "An Act to relieve certain officers employed in the collection and management of Her Majesty's revenues from any legal disability to vote at the election of members to serve in Parliament:"

And whereas the provisions of the said Act do not apply to the Collector-General of Rates in the city of Dublin, and to the officers and servants of the said collector-general appointed by virtue of an Act passed in the session of Parliament holden in the twelfth and thirteenth years of the reign of Her present Majesty, intituled "An Act to provide for the collection of rates in the city of Dublin:"

And whereas the said collector-general and the officers and servants employed for the purposes of the said last-recited Act are prohibited by the twenty-fourth section of the said Act from voting at any election of a member or members to serve in Parliament for the city of Dublin:

And whereas it is expedient that such prohibition should be repealed:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. From and after the passing of this Act, it shall be lawful for the Collector-General of Rates in the city of Dublin, and for the clerks, officers, and servants of the said collector-general, appointed under the provisions of the said "Act" to provide for the collection of rates in the city "of Dublin," when duly registered, to vote at any election of a member or members to serve in Parliament for the city of Dublin without incurring any penalty or forfeiture, anything contained in the said Act to the contrary notwithstanding.

## CHAP. 12.

### *The Customs (Isle of Man) Act, 1870.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Repeal of duties of customs on articles herein named.*

An Act to repeal certain Duties of Customs in the Isle of Man.

(12th May 1870.)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as "The Customs (Isle of Man) Act, 1870."

2. After the passing of this Act, the duties of customs chargeable upon the articles herein-after

mentioned on their being imported or brought into the Isle of Man shall cease and determine, and so much of the Act of the session of the eighteenth and nineteenth years of the reign of Her present Majesty, chapter ninety-seven, as imposed the same, is hereby repealed:

Corn, viz., wheat, barley, bear or bigg, oats, rye, peas, beans, buckwheat, maize or Indian corn, wheat meal and flour, barley meal, oat meal, rye meal and flour, pea meal, bean meal, buckwheat meal, and maize or Indian corn meal.

## CHAP. 13.

*The Survey Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Construction of Act.*
3. *Transfer of powers to Commissioners of Works.*
4. *Acts in schedule repealed.*
5. *Continuance of Act.*  
*Schedule.*

An Act to amend the Law relating to the Surveys of Great Britain, Ireland, and the Isle of Man.

(12th May 1870.)

WHEREAS by an Act of the sixth year of King George the Fourth, chapter ninety-nine, intituled "An Act to repeal an Act of the last session of Parliament relative to the forming tables of manors, parishes, and townlands in Ireland, and to make provision for ascertaining the boundaries of the same," and by an Act of the seventeenth and eighteenth years of the reign of Her present Majesty, chapter seventeen, intituled "An Act to make further provision for defining the boundaries of counties, baronies, half baronies, parishes, townlands, and other divisions and denominations of land in Ireland for public purposes," (which Acts are in this Act referred to as the Survey (Ireland) Acts), certain powers for the purpose of making and carrying on any survey authorized by those Acts or by the order of the Master General and Board of Ordnance were given to the Master General and Board of Ordnance, and to officers and other persons appointed by or acting under the orders of the Master General and Board of Ordnance :

And whereas all the powers and authorities of the principal officers of Her Majesty's Ordnance were, by an Act of the session of the eighteenth and nineteenth years of the reign of Her present Majesty, chapter one hundred and seventeen, intituled "An Act for transferring to one of Her Majesty's Principal Secretaries of State the powers and estates vested in the principal officers of the Ordnance," transferred to Her Majesty's Secretary of State for the War Department :

And whereas by the Act of the session of the fourth and fifth years of the reign of Her present Majesty, chapter thirty, intituled "An Act to authorize and facilitate the completion of a survey of Great Britain, Berwick-upon-Tweed, and the Isle of Man," (in this Act referred to as the Survey (Great Britain) Act,) certain powers

for the purpose of making such survey were given to the Master General and Board of Ordnance and to officers and other persons appointed by or acting under the orders of the Master General and Board of Ordnance :

And whereas the powers given by the last-mentioned Act to the Master General and Board of Ordnance having been continued by subsequent Acts were, by an Act of the session of the nineteenth and twentieth years of the reign of Her present Majesty, chapter sixty-one, intituled "An Act to continue an Act for the Survey of Great Britain, Berwick-upon-Tweed, and the Isle of Man," further continued until the thirty-first day of December one thousand eight hundred and sixty-one, and were by the same Act transferred to Her Majesty's Principal Secretary of State for the War Department :

And whereas the said powers have been since continued by divers subsequent Acts :

And whereas it is expedient to place the said surveys under the superintendence of the Commissioners for the time being of Her Majesty's Works and Public Buildings :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Survey Act, 1870.

2. This Act shall be construed as one, so far as it relates to Ireland with the Survey (Ireland) Acts, and so far as it relates to Great Britain and the Isle of Man with the Survey (Great Britain) Act, and the Survey (Ireland) Acts, together with this Act, may be cited together as the Survey (Ireland) Acts, 1825 to 1870, and the Survey (Great Britain) Act, together with this Act, may be cited as the Survey (Great Britain) Acts, 1841 and 1870.

3. All the powers, authorities, and things which under the Survey (Ireland) Acts, or the Survey (Great Britain) Act are, or, but for the

transfer to Her Majesty's Principal Secretary of State for the War Department would be, vested in or capable of being exercised and done by the Master General and Board of Ordnance shall, after the passing of this Act, be vested in and capable of being exercised and done by the Commissioners of Her Majesty's Works and Public Buildings, and not by the said Secretary of State, and those Acts shall be construed as if the Commissioners of Her Majesty's Works and Public Buildings were substituted throughout for the Master General and Board of Ordnance.

Every officer and other person who has been appointed before the passing of this Act by the Master General and Board of Ordnance, or Her

Majesty's Principal Secretary of State for the War Department, for the purpose of the said Acts or any of them, shall be deemed to have been appointed by the Commissioners of Her Majesty's Works and Public Buildings.

4. The Acts mentioned in the schedule to this Act are hereby repealed, without prejudice to anything already done or suffered.

5. This Act, so far as it relates to Great Britain and the Isle of Man, shall not (except as regards the repeal, which is perpetual,) continue in force for any longer time than the Survey (Great Britain) Act.



#### SCHEDULE.

Year and Chapter.	Title.
45 Geo. 3. c. 109.	- An Act to amend so much of an Act for granting to His Majesty several sums of money for defraying the charge of certain permanent services in Ireland as relates to the military survey of Ireland.
19 & 20 Vict. c. 61.	- An Act to continue an Act for the Survey of Great Britain, Berwick-upon-Tweed, and the Isle of Man.

#### CHAP. 14.

#### *The Naturalization Act, 1870.*

##### ABSTRACT OF THE ENACTMENTS.

##### 1. *Short title.*

*Status of Aliens in the United Kingdom.*

2. *Capacity of an alien as to property.*
3. *Power of naturalized aliens to divest themselves of their status in certain cases.*
4. *How British-born subject may cease to be such.*
5. *Alien not entitled to jury de medietate lingue.*

##### *Expatriation.*

6. *Capacity of British subject to renounce allegiance to Her Majesty.*

##### *Naturalization and resumption of British Nationality.*

7. *Certificate of naturalization.*
8. *Certificate of re-admission to British nationality.*
9. *Form of oath of allegiance.*

##### *National status of married women and infant children.*

10. *National status of married women and infant children.*

*Supplemental Provisions.*

11. *Regulations as to registration.*
12. *Regulations as to evidence.*

*Miscellaneous.*

13. *Saving of letters of denization.*
14. *Saving as to British ships.*
15. *Saving of allegiance prior to expatriation.*
16. *Power of colonies to legislate with respect to naturalization.*
17. *Definition of terms.*

*Repeal of Acts mentioned in Schedule.*

18. *Repeal of Acts.*  
*Schedule.*

An Act to amend the law relating to the legal condition of Aliens and British Subjects. (12th May 1870.)

WHEREAS it is expedient to amend the law relating to the legal condition of aliens and British subjects:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "The Naturalization Act, 1870."

*Status of Aliens in the United Kingdom.*

2. Real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject; and a title to real and personal property of every description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject: Provided,—

- (1.) That this section shall not confer any right on an alien to hold real property situate out of the United Kingdom, and shall not qualify an alien for any office, or for any municipal, parliamentary, or other franchise;
- (2.) That this section shall not entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him;
- (3.) That this section shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the passing of this Act, or in pursuance of any devo-

lution by law on the death of any person dying before the passing of this Act.

3. Where Her Majesty has entered into a convention with any foreign state to the effect that the subjects or citizens of that state who have been naturalized as British subjects may divest themselves of their status as such subjects, it shall be lawful for Her Majesty, by Order in Council, to declare that such convention has been entered into by Her Majesty; and from and after the date of such Order in Council, any person being originally a subject or citizen of the state referred to in such Order, who has been naturalized as a British subject, may, within such limit of time as may be provided in the convention, make a declaration of alienage, and from and after the date of his so making such declaration such person shall be regarded as an alien, and as a subject of the state to which he originally belonged as aforesaid.

A declaration of alienage may be made as follows; that is to say,—if the declarant be in the United Kingdom in the presence of any justice of the peace, if elsewhere in Her Majesty's dominions in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions in the presence of any officer in the diplomatic or consular service of Her Majesty.

4. Any person who by reason of his having been born within the dominions of Her Majesty is a natural-born subject, but who also at the time of his birth became under the law of any foreign state a subject of such state, and is still such subject, may, if of full age and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration of alienage such person shall cease to be a British subject. Any person who is born out of Her Majesty's dominions of a father

being a British subject may, if of full age, and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration shall cease to be a British subject.

5. From and after the passing of this Act, an alien shall not be entitled to be tried by a jury *de medietate lingue*, but shall be triable in the same manner as if he were a natural-born subject.

#### *Expatriation.*

6. Any British subject who has at any time before or may at any time after the passing of this Act, when in any foreign state, and not under any disability, voluntarily become naturalized in such state, shall from and after the time of his so having become naturalized in such foreign state be deemed to have ceased to be a British subject and be regarded as an alien: Provided,—

(1.) That where any British subject has before the passing of this Act voluntarily become naturalized in a foreign state, and yet is desirous of remaining a British subject, he may, at any time within two years after the passing of this Act, make a declaration that he is desirous of remaining a British subject, and upon such declaration, herein-after referred to as a declaration of British nationality, being made, and upon his taking the oath of allegiance, the declarant shall be deemed to be and to have been continually a British subject; with this qualification, that he shall not, when within the limits of the foreign state in which he has been naturalized, be deemed to be a British subject, unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect:

(2.) A declaration of British nationality may be made, and the oath of allegiance be taken as follows; that is to say,—if the declarant be in the United Kingdom in the presence of a justice of the peace; if elsewhere in Her Majesty's dominions in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions in the presence of any officer in the diplomatic or consular service of Her Majesty.

#### *Naturalization and resumption of British Nationality.*

7. An alien, who, within such limited time before making the application herein-after men-

tioned as may be allowed by one of Her Majesty's Principal Secretaries of State, either by general order or on any special occasion, has resided in the United Kingdom for a term of not less than five years, or has been in the service of the Crown for a term of not less than five years, and intends, when naturalized, either to reside in the United Kingdom, or to serve under the Crown, may apply to one of Her Majesty's Principal Secretaries of State for a certificate of naturalization.

The applicant shall adduce in support of his application such evidence of his residence or service, and intention to reside or serve, as such Secretary of State may require. The said Secretary of State, if satisfied with the evidence adduced, shall take the case of the applicant into consideration, and may, with or without assigning any reason, give or withhold a certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision, but such certificate shall not take effect until the applicant has taken the oath of allegiance.

An alien to whom a certificate of naturalization is granted shall in the United Kingdom be entitled to all political and other rights, powers, and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject in the United Kingdom, with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that state, in pursuance of the laws thereof, or in pursuance of a treaty to that effect.

The said Secretary of State may in manner aforesaid grant a special certificate of naturalization to any person with respect to whose nationality as a British subject a doubt exists, and he may specify in such certificate that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be a British subject, and the grant of such special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.

An alien who has been naturalized previously to the passing of this Act may apply to the Secretary of State for a certificate of naturalization under this Act, and it shall be lawful for the said Secretary of State to grant such certificate to such naturalized alien upon the same terms and subject to the same conditions in and upon which such certificate might have been granted if such alien had not been previously naturalized in the United Kingdom.

8. A natural-born British subject who has become an alien in pursuance of this Act, and is in this Act referred to as a statutory alien, may, on performing the same conditions and adducing

the same evidence as is required in the case of an alien applying for a certificate of nationality, apply to one of Her Majesty's Principal Secretaries of State for a certificate, herein-after referred to as a certificate of re-admission to British nationality, re-admitting him to the status of a British subject. The said Secretary of State shall have the same discretion as to the giving or withholding of the certificate as in the case of a certificate of naturalization, and an oath of allegiance shall in like manner be required previously to the issuing of the certificate.

A statutory alien to whom a certificate of re-admission to British nationality has been granted shall, from the date of the certificate of re-admission, but not in respect of any previous transaction, resume his position as a British subject; with this qualification, that within the limits of the foreign state of which he became a subject he shall not be deemed to be a British subject unless he has ceased to be a subject of that foreign state according to the laws thereof, or in pursuance of a treaty to that effect.

The jurisdiction by this Act conferred on the Secretary of State in the United Kingdom in respect of the grant of a certificate of re-admission to British nationality, in the case of any statutory alien being in any British possession, may be exercised by the governor of such possession; and residence in such possession shall, in the case of such person, be deemed equivalent to residence in the United Kingdom.

9. The oath in this Act referred to as the oath of allegiance shall be in the form following; that is to say,

"I do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law. So help me GOD."

*National status of married women and infant children.*

10. The following enactments shall be made with respect to the national status of women and children:

- (1.) A married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject:
- (2.) A widow being a natural-born British subject, who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may as such at any time during widowhood obtain a certificate of re-admission to British nationality in manner provided by this Act:
- (3.) Where the father being a British subject, or the mother being a British subject and a widow, becomes an alien in pursuance of this Act, every child of such father

or mother who during infancy has become resident in the country where the father or mother is naturalized, and has according to the laws of such country become naturalized therein, shall be deemed to be a subject of the state of which the father or mother has become a subject, and not a British subject:

- (4.) Where the father, or the mother being a widow, has obtained a certificate of re-admission to British nationality, every child of such father or mother who during infancy has become resident in the British dominions with such father or mother shall be deemed to have resumed the position of a British subject to all intents:
- (5.) Where the father, or the mother being a widow, has obtained a certificate of naturalization in the United Kingdom, every child of such father or mother who during infancy has become resident with such father or mother in any part of the United Kingdom shall be deemed to be a naturalized British subject.

#### *Supplemental Provisions.*

11. One of Her Majesty's Principal Secretaries of State may by regulation provide for the following matters:—

- (1.) The form and registration of declarations of British nationality:
- (2.) The form and registration of certificates of naturalization in the United Kingdom:
- (3.) The form and registration of certificates of re-admission to British nationality:
- (4.) The form and registration of declarations of alienage:
- (5.) The registration by officers in the diplomatic or consular service of Her Majesty of the births and deaths of British subjects who may be born or die out of Her Majesty's dominions, and of the marriages of persons married at any of Her Majesty's embassies or legations:
- (6.) The transmission to the United Kingdom for the purpose of registration or safe keeping, or of being produced as evidence, of any declarations or certificates made in pursuance of this Act out of the United Kingdom, or of any copies of such declarations or certificates, also of copies of entries contained in any register kept out of the United Kingdom in pursuance of or for the purpose of carrying into effect the provisions of this Act:
- (7.) With the consent of the Treasury, the imposition and application of fees in respect of any registration authorized to be made by this Act, and in respect of the making any declaration or the grant of



any certificate authorized to be made or granted by this Act.

The said Secretary of State, by a further regulation, may repeal, alter, or add to any regulation previously made by him in pursuance of this section.

Any regulation made by the said Secretary of State in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if it had been enacted in this Act, but shall not, so far as respects the imposition of fees, be in force in any British possession, and shall not, so far as respects any other matter, be in force in any British possession in which any Act or ordinance to the contrary of or inconsistent with any such direction may for the time being be in force.

12. The following regulations shall be made with respect to evidence under this Act:—

- (1.) Any declaration authorized to be made under this Act may be proved in any legal proceeding by the production of the original declaration, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such declaration, and the production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date in the said declaration mentioned:
- (2.) A certificate of naturalization may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such certificate:
- (3.) A certificate of re-admission to British nationality may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such certificate:
- (4.) Entries in any register authorized to be made in pursuance of this Act shall be proved by such copies and certified in such manner as may be directed by one of Her Majesty's Principal Secretaries of State, and the copies of such entries shall be evidence of any matters by this Act or by any regulation of the said Secretary of

State authorized to be inserted in the register:

- (5.) The Documentary Evidence Act, 1868, shall apply to any regulation made by a Secretary of State, in pursuance of or for the purpose of carrying into effect any of the provisions of this Act.

#### *Miscellaneous.*

13. Nothing in this Act contained shall affect the grant of letters of denization by Her Majesty.

14. Nothing in this Act contained shall qualify an alien to be the owner of a British ship.

15. Where any British subject has in pursuance of this Act become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien.

16. All laws, statutes, and ordinances which may be duly made by the legislature of any British possession for imparting to any person the privileges, or any of the privileges, of naturalization, to be enjoyed by such person within the limits of such possession, shall within such limits have the authority of law, but shall be subject to be confirmed or disallowed by Her Majesty in the same manner and subject to the same rules in and subject to which Her Majesty has power to confirm or disallow any other laws, statutes, or ordinances in that possession.

17. In this Act, if not inconsistent with the context or subject-matter thereof,—

- “Disability” shall mean the status of being an infant, lunatic, idiot, or married woman:
- “British possession” shall mean any colony, plantation, island, territory, or settlement within Her Majesty's dominions, and not within the United Kingdom, and all territories and places under one legislature are deemed to be one British possession for the purposes of this Act:
- “The Governor of any British possession” shall include any person exercising the chief authority in such possession:
- “Officer in the Diplomatic Service of Her Majesty” shall mean any Ambassador, Minister, or Chargé d’Affaires, or Secretary of Legation, or any person appointed by such Ambassador, Minister, Chargé d’Affaires, or Secretary of Legation to execute any duties imposed by this Act on an officer in the Diplomatic Service of Her Majesty:
- “Officer in the Consular service of Her Majesty” shall mean and include Consul-General, Consul, Vice-Consul, and Consular Agent, and any person for the time being discharging the duties of Consul-General, Consul, Vice-Consul, and Consular Agent.

*Repeal of Acts mentioned in Schedule.*

18. The several Acts set forth in the first and second parts of the schedule annexed hereto shall be wholly repealed, and the Acts set forth in the third part of the said schedule shall be repealed to the extent therein mentioned; provided that the repeal enacted in this Act shall not affect—

- (1.) Any right acquired or thing done before the passing of this Act:

- (2.) Any liability accruing before the passing of this Act:  
 (3.) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before the passing of this Act:  
 (4.) The institution of any investigation or legal proceeding or any other remedy for ascertaining or enforcing any such liability, penalty, forfeiture, or punishment as aforesaid.

---

SCHEDULE.

NOTE.—Reference is made to the repeal of the “whole Act” where portions have been repealed before, in order to preclude henceforth the necessity of looking back to previous Acts. This Schedule, so far as respects Acts prior to the reign of George the Second, other than Acts of the Irish Parliament, refers to the edition prepared under the direction of the Record Commission, intituled “The Statutes of the Realm; printed by command of His Majesty King George the Third, in pursuance of an Address of the House of Commons of Great Britain. From original Records and authentic Manuscripts.”

---

PART I.

ACTS WHOLLY REPEALED, OTHER THAN ACTS OF THE IRISH PARLIAMENT.

Date.	Title.
7 Jas. 1. c. 2.	- An Act that all such as are to be naturalized or restored in blood shall first receive the sacrament of the Lord's Supper, and the oath of allegiance and the oath of supremacy.
11 Will. 3. c. 6. (a.)	- An Act to enable His Majesty's natural-born subjects to inherit the estate of their ancestors, either lineal or collateral, notwithstanding their father or mother were aliens.
13 Geo. 2. c. 7.	- An Act for naturalizing such foreign Protestants and others therein mentioned as are settled or shall settle in any of His Majesty's colonies in America.
20 Geo. 2. c. 44.	- An Act to extend the provisions of an Act made in the thirteenth year of His present Majesty's reign, intituled “An Act for naturalizing foreign Protestants and others therein mentioned, as are settled or shall settle in any of His Majesty's colonies in America, to other foreign Protestants who conscientiously scruple the taking of an oath.”
13 Geo. 3. c. 25.	- An Act to explain two Acts of Parliament, one of the thirteenth year of the reign of His late Majesty, “for naturalizing such foreign Protestants and others as are settled or shall settle in any of His Majesty's colonies in America,” and the other of the second year of the reign of His present Majesty, “for naturalizing such foreign Protestants as have served or shall serve as officers or soldiers in His Majesty's Royal American regiment, or as engineers in America.”
14 Geo. 3. c. 84.	- An Act to prevent certain inconveniences that may happen by bills of naturalization.
16 Geo. 3. c. 52.	- An Act to declare His Majesty's natural-born subjects inheritable to the estates of their ancestors, whether lineal or collateral, in that part of Great Britain called Scotland, notwithstanding their father or mother were aliens.

(a.) 11 & 12 Wm. 3. (Russ.)

Date.	Title.
6 Geo. 4. c. 67.	- An Act to alter and amend an Act passed in the seventh year of the reign of His Majesty King James the First, intituled "An Act that all such " as are to be naturalized or restored in blood shall first receive the " sacrament of the Lord's Supper and the oath of allegiance and the oath " of supremacy."
7 & 8 Vict. c. 66.	- An Act to amend the laws relating to aliens.
10 & 11 Vict. c. 83.	- An Act for the naturalization of aliens.

## PART II.

## ACTS OF THE IRISH PARLIAMENT WHOLLY REPEALED.

Date.	Title.
14 & 15 Chas. 2. c. 13.	An Act for encouraging Protestant strangers and other to inhabit and plant in the kingdom of Ireland.
2 Anne, c. 14.	- An Act for naturalizing of all Protestant strangers in this kingdom.
19 & 20 Geo. 3. c. 29.	An Act for naturalizing such foreign merchants, traders, artificers, artizans, manufacturers, workmen, seamen, farmers, and others as shall settle in this kingdom.
23 & 24 Geo. 3. c. 38.	An Act for extending the provisions of an Act passed in this kingdom in the nineteenth and twentieth years of His Majesty's reign, intituled "An " Act for naturalizing such foreign merchants, traders, artificers, artizans, " manufacturers, workmen, seamen, farmers, and others as shall settle in " this kingdom."
36 Geo. 3. c. 48.	- An Act to explain and amend an Act, intituled "An Act for naturalizing " such foreign merchants, traders, artificers, artizans, manufacturers, " workmen, seamen, farmers, and others who shall settle in this king- " dom."

## PART III.

## ACTS PARTIALLY REPEALED.

		Extent of Repeal.
4 Geo. 1. c. 9. (Act of Irish Parlia- ment.)	- An Act for reviving, continuing, and amending several statutes made in this kingdom heretofore temporary.	So far as it makes per- petual the Act of 2 Anne, c. 14.
6 Geo. 4. c. 50.	- An Act for consolidating and amending the laws relative to Jurors and Juries.	The whole of sect. 47.
3 & 4 Will. 4. c. 91.	An Act consolidating and amending the laws relating to Jurors and Juries in Ireland.	The whole of sect. 37.

## CHAP. 15.

*The County Court (Buildings) Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. Short title.
2. Definition of "Commissioners of Works."
3. Transfer of property from treasurers to Commissioners.
4. As to providing courts, offices, &c.
5. Provisions of Acts in schedule repealed.  
Schedule.

An Act to transfer to the Commissioners of Her Majesty's Works and Public Buildings the property in and control over the buildings and property of the County Courts in England, and for other purposes relating thereto.

(20th June 1870.)

WHEREAS it is expedient to transfer to the Commissioners of Her Majesty's Works and Public Buildings the complete control over the buildings and property of the County Courts in England, and to vest in the said Commissioners the buildings and property now vested in the treasurers of the said courts :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as "The County Court (Buildings) Act, 1870."

2. In this Act the term "the Commissioners of Works" means the Commissioners of Her Majesty's Works and Public Buildings, as incorporated by the Act of the session of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter twenty-eight, intituled "An Act to amend an Act of the fourteenth and fifteenth years of Her present Majesty, for the direction of Public Works and Buildings, and to vest the buildings appropriated for the accommodation of the Supreme Courts of Justice in Edinburgh in the Commissioners of Her Majesty's Works and Public Buildings."

3. All property, real and personal, (other than money and securities for money, books, papers,

and records,) belonging to any county court, of or to which the treasurer of any county court or any other person is seised, possessed, or entitled in trust for a county court, under the sections of the Acts mentioned in the schedule to this Act, shall, on the passing of this Act, pass to and be vested in the Commissioners of Works, for the same estate and interest, and subject to the same covenants, conditions, agreements, and liabilities, for and subject to which the same were held by the said treasurer or other person ; and such treasurer or other person shall be discharged from such covenants, conditions, agreements, and liabilities.

4. The Commissioners of Works, with the approval of the Commissioners of Her Majesty's Treasury, shall from time to time build, purchase, hire, or otherwise provide such court-house, offices, and buildings as may be necessary for carrying on the business of any county court, and cause the same to be furnished, cleaned, lighted, and warmed, and give such directions to the registrar of each court with regard to the hiring and dismissing of servants as shall seem fit.

For the purposes of any such purchase, the Lands Clauses Consolidation Act, 1845, and the Acts amending the same, (except so much thereof as relates to the purchase of land otherwise than by agreement,) are hereby incorporated with this Act, and in construing those Acts for the purposes of this Act the special Act shall be construed to mean this Act, and the promoters of the undertaking shall be construed to be the Commissioners of Works.

5. The Acts mentioned in the schedule to this Act are hereby repealed, to the extent in the third column of the said schedule mentioned, without prejudice to anything already done or suffered or any right already acquired or accrued.

#### SCHEDULE.

Year and Chapter.		Title.	Extent of Repeal.
9 & 10 Vict. c. 95.	-	The County Courts Act, 1846.	Sections forty-eight and fifty to fifty-five, both inclusive.
29 & 30 Vict. c. 14.	-	The County Courts Act, 1866.	Section eight, except so far as it relates to money and securities for money, and section nine.
30 & 31 Vict. c. 142.	-	The County Courts Act, 1867.	Section eighteen.

## CHAP. 16.

*The Inverness and Elgin County Boundaries Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Portions of counties described in schedule A. transferred to the county of Inverness.*
3. *Portions of counties described in schedule B. transferred to county of Elgin.*
4. *Certain roads and bridges transferred to Commissioners of Supply of county of Inverness.*
5. *Certain roads and bridges transferred to Elgin County Road Trustees.*
6. *As to contracts for maintenance of roads.*
7. *Reserving rights of ministers with respect to stipends.*
8. *Reserving rights of schoolmasters to Dick Bequest.*
9. *Reserving rights of inhabitants of Duthil and Abernethy as regards Elgin Institution.*
10. *Court-house at Grantown to be joint property of two counties.*
11. *Payment of proportion of expense of court-house by county of Elgin and county of Inverness.*
12. *Provision for raising money by county of Elgin.*
13. *Sheriff of Inverness may hold courts under Small Debt Act within village of Grantown.*
14. *Justices of the peace for Inverness may hold courts within the village of Grantown.*
15. *Saving assessments, &c. already imposed.*
16. *Expenses of Act.*  
*Schedules.*

**An Act to define the boundary between the counties of Inverness and Elgin or Moray, in the district of Strathspey; and for other purposes.**

(20th June 1870.)

**WHEREAS** doubts exist with respect to the boundary between the county of Inverness and the county of Elgin or Moray (herein-after called the county of Elgin), in the district of Strathspey:

And whereas certain parts of the county of Elgin, and certain parts of the county of Inverness, situated in the same district, and comprehending the parishes, or portions of the parishes, of Duthil and Abernethy, and of the united parish of Cromdale and Inverallan, are wholly or partially detached from their respective counties, and it will be for public advantage that the boundary between those counties in the district of Strathspey should be defined, and that the detached portions of the county of Elgin should be annexed to and form part of the county of Inverness, and that the detached portions of the county of Inverness should be annexed to and form part of the county of Elgin:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "The Inverness and Elgin County Boundaries Act, 1870."

2. Those parts and portions of the counties of Elgin and Inverness described in the schedule A. annexed to this Act, whether the same shall heretofore have been locally situated within the county of Elgin or the county of Inverness, shall, from and after the fifteenth day of May one thousand eight hundred and seventy, be held to be, and be, for all purposes whatsoever, except in so far as herein-after provided, part of the county, sheriffdom, and commissariat of Inverness.

3. Those parts and portions of the counties of Inverness and Elgin described in the schedule B. annexed to this Act, whether the same shall heretofore have been locally situated within the county of Inverness or the county of Elgin, shall, from and after the fifteenth day of May one thousand eight hundred and seventy, be held to be, and be, for all purposes whatsoever, except in so far as herein-after provided, part of the county and sheriffdom of Elgin and commissariat of Elgin and Nairn.

4. From and after the fifteenth day of May one thousand eight hundred and seventy, the roads and bridges presently maintained by the Elgin County Road Trustees under "The Elgin and Nairn Roads and Bridges Act, 1863," upon or within the district described in the schedule A. annexed to this Act, shall form part of the roads and bridges under the management and control of the Commissioners of Supply of the county of Inverness, and the assessment authorized to be levied by "The Highland Roads and Bridges

Act, 1862," shall apply to and may be levied by the Commissioners of Supply of the county of Inverness upon and within the said district in like manner and to the same effect as if that district had formed part of the county of Inverness at the passing of the last-mentioned Act.

5. From and after the fifteenth day of May one thousand eight hundred and seventy, the roads and bridges upon or within the district described in the schedule B. annexed to this Act shall form part of the roads and bridges under the management and control of the Elgin County Road Trustees acting under "The Elgin and Nairn Roads and Bridges Act, 1863," and the assessments authorized to be levied by that Act shall apply to and may be levied by the said Trustees upon and within the said district, in like manner and to the same effect as if that district had formed part of the county of Elgin at the passing of that Act.

6. From and after the fifteenth day of May one thousand eight hundred and seventy, all contracts for the maintenance and repair of the roads and bridges throughout the district described in the schedule A. annexed to this Act shall cease and determine as regards the Elgin County Road Trustees, or any person or persons acting on their behalf, except in regard to any claims due and payable by the trustees prior to the said fifteenth day of May one thousand eight hundred and seventy; and such contracts shall thereafter be binding on and may be enforced by and against the Commissioners of Supply of the county of Inverness, acting under "The Highland Roads and Bridges Act, 1862," as fully and effectually as the same would have been binding on or might have been enforced by and against the Elgin County Road Trustees; and in like manner, from and after the said fifteenth day of May one thousand eight hundred and seventy, all contracts for the maintenance and repair of the roads and bridges throughout the district described in the schedule B. annexed to this Act shall cease and determine as regards the Commissioners of Supply of the county of Inverness, or the District Road Trustees of that county, or any person or persons acting on their behalf, except in regard to any claims due and payable by those Commissioners, or the District Trustees, prior to the said fifteenth day of May one thousand eight hundred and seventy, and such contracts shall thereafter be binding on and may be enforced by and against the Elgin County Road Trustees as fully and effectually as the same would have been binding on or might have been enforced by and against the said Commissioners or District Road Trustees.

7. Nothing herein contained shall affect the right of the present ministers of the parishes of

Cromdale, Abernethy, and Duthil, so long as they shall continue ministers of those parishes respectively, to be paid their stipends, according to the fairs prices of the county by which they are entitled to be paid at the date of the passing of this Act.

8. Nothing herein contained shall affect the right of the present or future schoolmasters of the parish schools of the parishes of Duthil and Abernethy, in the county of Elgin, to participate in the benefits of the bequest of the late James Dick, esquire, of Finsbury Square, London, commonly called the Dick Bequest; but the schoolmasters of those parishes shall be entitled to all the benefits of the said bequest in the same way and manner as if the parishes of Duthil and Abernethy had continued to be locally situated in the county of Elgin.

9. Nothing herein contained shall affect the right of the inhabitants of the parishes of Duthil and Abernethy to be admitted into and to participate in the benefits of "The Elgin Institution" for the Support of Old Age and Education of "Youth," established under the will of the late Major-General Andrew Anderson, of the late Honourable East India Company's service; but the inhabitants of those parishes shall be entitled to all the benefits of that institution in the same way and manner as if those parishes had continued to be locally situate in the county of Elgin.

10. The court-house erected in the village of Grantown, in virtue of the provisions of "The Sheriff Court-Houses (Scotland) Act, 1860," shall, from and after the passing of this Act, be vested in and become the property of the Commissioners of Supply of the county of Inverness and the Commissioners of Supply of the county of Elgin, jointly, for the joint use and benefit of those counties, excepting the police station, or the rooms in that court-house set apart for the use of a police constable, with the cells thereto attached, which shall be vested in and become the property of the Commissioners of Supply of the county of Elgin.

11. The Commissioners of Supply of the county of Elgin shall, on or before the fifteenth day of June one thousand eight hundred and seventy, pay to the Commissioners of Supply of the county of Inverness the sum of three hundred and seventy-one pounds sterling towards the expense of erecting the said court-house, disbursed by the Commissioners of Supply of the county of Inverness, and the further sum of five hundred and two pounds sterling, being the whole expense of the said police station, or rooms and cells, disbursed by them, with interest at the

rate of five pounds per centum per annum on those sums respectively from the fifteenth day of May one thousand eight hundred and seventy, till paid.

12. For the purpose of raising the money necessary to pay for the said court-house to the Commissioners of Supply of the county of Inverness, the Commissioners of Supply of the county of Elgin may raise and levy by assessment, in the manner provided by "The Sheriff Court-Houses (Scotland) Act, 1860," a sum not exceeding four hundred and twenty pounds sterling; and for the purpose of raising the money necessary to pay for the said police station, or rooms and cells, they may raise and levy by assessment, in the manner provided by the Act twenty and twenty-one Victoria, chapter seventy-two, the sum of five hundred and fifty pounds sterling; and for the purpose of raising such sums of money the provisions of "The Sheriff Court-Houses (Scotland) Act, 1860," and the Act twenty and twenty-one Victoria, chapter seventy-two, relative to assessments, and the levying and recovering of the same, are incorporated with, and form part of, this Act.

13. And whereas there is no place in the upper district of the county of Inverness where circuit courts can conveniently be held, except the village of Grantown, which is situate in the district by this Act annexed to the county of Elgin: Therefore, notwithstanding the provisions of this Act, the sheriff of the county of Inverness, or his substitutes, may respectively grant warrants and hold courts for the trial of all causes under the Act one Victoria, chapter forty-one, as extended by the Act sixteen and seventeen Victoria, chapter eighty, and also under the Act thirty and thirty-one Victoria, chapter ninety-six, and also under the Act twenty-seven and twenty-eight Victoria, chapter fifty-three, and he or they may respectively pronounce judgment therein, and act otherwise with respect thereto, within the said village of Grantown, in the same way, and to the same effect in all respects, as if such courts were held, and warrants granted, and judgments pronounced, and acts done within the county of Inverness; and the sheriff-clerk and officers of the county of Inverness may issue summonses and other writs and perform the other duties authorized by the last-recited Acts within the village of Grantown in like manner as within the county of Inverness.

14. Notwithstanding the provisions of this Act, the justices of the peace of the county of Inverness may grant warrants, and hold courts for the trial of all causes, and for the disposal of all matters falling under their jurisdiction, and they may pronounce judgment therein, and act other-

wise with respect thereto, within the said village of Grantown, in the same way and to the same effect in all respects as if such courts were held, and warrants granted, and judgments pronounced, and acts done within the county of Inverness; and the clerk of the peace and officers of the county of Inverness may issue summonses and other writs, and perform all the other duties pertaining to their offices, within the village of Grantown in like manner as within the county of Inverness.

15. Nothing herein contained shall affect any assessment due to or imposed by the Commissioners of Supply of the county of Inverness, or of the county of Elgin, or the Elgin County Road Trustees respectively, previous to the passing of this Act, but the same shall be paid and may be recovered in the same manner and to the same effect as if this Act had not been passed; and nothing herein contained shall affect any action or proceeding instituted, raised, or depending before any court, civil or criminal, previous to the passing of this Act, and the same may be proceeded with, determined, and followed forth by diligence or otherwise as if this Act had not been passed.

16. All costs, charges, and expenses of and incident to the preparing for, obtaining, and passing of this Act, or otherwise in relation thereto, shall be paid by the Commissioners of Supply of the county of Inverness, and the Commissioners of Supply of the county of Elgin, in equal moieties, out of the county general assessments levied by them respectively, under the provisions of "The County General Assessment (Scotland) Act, 1868."

#### SCHEDULE A.

##### *Description of District transferred to County of Inverness.*

The whole parish of Duthil. Those parts of the united parish of Cromdale and Inverallan on the north side of the River Spey lying to the west and south of the following line, viz.:—From the mouth of the River Dulnan, where it enters the River Spey, up the River Dulnan to the point where the Burn called the Muckrach or Findlarigg Burn enters it; and thence up the Muckrach or Findlarigg Burn to a point thereon where a stone marked "County Boundary" has been placed five hundred and seventy-two yards or thereby, measuring in a straight line from the well called Fuaranahanish Well, lying on the south side of the hill called Beinmore; and from the last-mentioned point on the said Muckrach or Findlarigg

Burn in a straight line to the said well, which is a point on the present boundary between the counties of Inverness and Elgin or Moray. The whole parish of Abernethy as well those parts of the same situated in the county of Elgin or Moray as those parts situated in the county of Inverness.

#### SCHEDULE B.

##### *Description of District transferred to County of Elgin or Moray.*

Those parts and portions of the united parish of Cromdale and Inverallan, on the north side of the River Spey, lying to the north and east of the

following line, viz.:—From the mouth of the River Dulnan, where it enters the River Spey, up the River Dulnan to the point where the Burn called the Muckrach or Findlarigg Burn enters it; thence up the Muckrach or Findlarigg Burn to a point thereon where a stone marked "County Boundary" has been placed five hundred and seventy-two yards or thereby, measuring in a straight line from the well called Fuaranahaniah Well, lying on the south side of the hill called Beinmore; and from the last-mentioned point on the said Muckrach or Findlarigg Burn in a straight line to the said well, which is a point on the present boundary between the counties of Inverness and Elgin or Moray. Those parts of the united parish of Cromdale and Inverallan lying on the south side of the River Spey.

#### CHAP. 17.

##### *The War Office Act, 1870.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Appointment of Surveyor General of Ordnance.*
3. *Appointment of Financial Secretary of War Office.*
4. *Duties of officers appointed under Act.*
5. *Salaries of officers.*

An Act for making further provision relating to the Management of certain Departments of the War Office.

(20th June 1870.)

WHEREAS previously to the date of the Act next herein-after mentioned divers duties relating to the administration of ordnance, munitions of war, and military stores, were performed by certain officers, styled the principal officers of Ordnance;

And whereas by the Act of the session of the eighteenth and nineteenth years of the reign of Her present Majesty, chapter one hundred and seventeen, intituled "An Act for transferring to "one of Her Majesty's Principal Secretaries of State the powers and estates vested in the "principal officers of the Ordnance," all the duties hitherto performed by the said principal officers were vested in one of Her Majesty's Principal Secretaries of State:

And whereas by the Act of the session of the twenty-sixth and twenty-seventh years of the reign of Her present Majesty, chapter twelve, intituled "An Act to abolish the office of Secretary at War, and to transfer the duties of that office

"to one of Her Majesty's Principal Secretaries of State," the office of Secretary at War was abolished, and the various duties, powers, and authorities of the Secretary at War were vested in one of Her Majesty's Principal Secretaries of State:

And whereas it is expedient to make further provision for the performance of the increased duties that have so devolved on the said Secretary of State, and that the officers to be appointed under this Act to discharge such duties should, as the principal officers of Ordnance and Secretary at War formerly were, be eligible to sit in Parliament:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "The War Office Act, 1870."

2. From and after the passing of this Act, one of Her Majesty's Principal Secretaries of State may from time to time appoint and at his pleasure remove an officer to be styled the Surveyor



General of the Ordnance, and such officer shall not by virtue of such appointment, if sitting in the Commons House of Parliament, vacate his seat, or, whether sitting in such House or not, be disqualified from being elected to or sitting or voting in the said House of Parliament.

3. From and after the passing of this Act, one of Her Majesty's Principal Secretaries of State may from time to time appoint and at his pleasure remove an officer to be styled the Financial Secretary of the War Office, and such officer shall not by virtue of such appointment, if sitting in the Commons House of Parliament, vacate his seat, or, whether sitting in such House or not, be disqualified from being elected to or sitting or voting in the said House of Parliament.

4. There shall be performed by the officers appointed under this Act such duties in relation to the War Office of Her Majesty's Government as Her Majesty may, by Order in Council, from time to time assign to them, and such Order in Council shall, if Parliament be sitting at the time of the making thereof, be laid before Parliament within fourteen days after the date thereof, and if Parliament be not then sitting, within fourteen days after the next meeting thereof.

5. There shall be paid to the officers appointed under this Act, out of moneys to be provided by Parliament, such salaries as shall be from time to time regulated by the Lord High Treasurer or the Commissioners of Her Majesty's Treasury.

#### CHAP. 18.

#### *The Metropolitan Poor Amendment Act, 1870.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Maintenance of in-door poor to be a charge upon the Metropolitan Common Poor Fund.*
2. *The maintenance of officers to be allowed as part of their salaries.*
3. *Financial statement of guardians.*
4. *Construction. Short title.*

An Act to provide for the equal distribution over the Metropolis of a further portion of the charge for the Relief of the Poor. (20th June 1870.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. From and after the twenty-ninth day of September one thousand eight hundred and seventy, the provisions of the sixty-ninth section of the Metropolitan Poor Act, 1867, directing the repayment of the expenses incurred for the maintenance of lunatics and insane poor, and of patients in any asylum specially provided under that Act for patients suffering from fever and small pox, shall extend to the expenses incurred for the maintenance of paupers in any other asylum now or hereafter to be provided under the said Act, and to the maintenance of paupers above the age of sixteen years in any workhouse in the Metropolis, and the Poor Law Board shall, by its precept under seal, direct the Receiver of the Common Poor Fund to repay such expenses

out of that fund, in the same manner as the expenses specified in that section, subject, nevertheless, to the following provisions:—

- (1.) The Poor Law Board shall certify the maximum number of paupers to be maintained in any workhouse or asylum.
- (2.) No repayment shall be made in respect of a greater number of paupers maintained in any asylum on any one day than will complete the maximum number which such asylum shall have been certified to hold as aforesaid, nor in respect of a greater number of paupers maintained in any workhouse on any one day than will, together with the children under the age of sixteen, if any, maintained therein on the same day, complete the maximum number certified for such workhouse.
- (3.) The amount so repaid in respect of such maintenance shall be at the rate of five-pence per day for each pauper in such workhouse or asylum.
- (4.) If the guardians of any union or parish, or the managers of any asylum, shall, during any half year ending at Lady Day or Michaelmas respectively, have refused or neglected to comply with any Order of

the Poor Law Board, issued under the Poor Law Acts, directing the alteration or enlargement of the workhouse, the provision of proper drainage, sewers, ventilation, fixtures, furniture, surgical and medical appliances, or directing the appointment of any officer, or prescribing the maximum number of paupers to be maintained in any workhouse or asylum, or the classification of such paupers, such guardians or managers shall be deemed to be in default, and the Poor Law Board may, if they think fit, omit from their precept for such half year, addressed to the Receiver of the Common Poor Fund, the sums which such guardians or the guardians of the unions and parishes comprised in the district to which the asylum belongs, would have been entitled to be repaid under this Act if there had been no such default: Provided that if such guardians or managers shall comply with such Order before the termination of the next ensuing half year, it shall be lawful for the

Poor Law Board to include in their precept for that half year the sums so omitted from their precept for the previous half year.

2. The term "salaries of officers," referred to in the said sixty-ninth section of the said Metropolitan Poor Act, shall include the cost of the rations of the officers therein described, according to a scale to be fixed by the Poor Law Board.

3. Within one month of each audit of the accounts of the board of guardians of any union or parish in the metropolis, such board shall deliver, by post or otherwise, to each vestry within such union or parish, one or more copies of the financial statement of such guardians, showing the receipts, expenditure, balances, and liabilities for the half year, as audited.

4. This Act shall be construed in like manner as the Metropolitan Poor Act of 1867, and shall be termed The Metropolitan Poor Amendment Act, 1870.

#### CHAP. 19.

#### *The Railways (Powers and Construction) Acts, 1864, Amendment Act, 1870.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Parts of Acts herein named repealed.*
3. *Powers of Board of Trade where notice of opposition lodged. As to payment of costs of Orders.*
4. *Confirmation of Provisional Certificate by Act of Parliament.*
5. *Section 33 of 27 & 28 Vict. c. 121. repealed. Application of sections 4, 6, 7, and 8 of 9 & 10 Vict. c. 57. Gauge of railways.*
6. *Amendment of Part IV. of the schedule to 27 & 28 Vict. c. 121. Schedule.*

An Act to amend "The Railway Companies Powers Act, 1864," and "The Railway Construction Facilities Act, 1864." (20th June 1870.)

WHEREAS it is expedient to amend "The Railway Companies Powers Act, 1864," and also "The Railways Construction Facilities Act, 1864:"

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "The Railways (Powers and Construction) Acts, 1864, Amendment Act, 1870."

2. From and after the passing of this Act, there shall be repealed sections seven and eight of The Railway Companies Powers Act, 1864, and Part I. of the schedule annexed to the said Act; and sections nine and ten of The Railways Construction Facilities Act, 1864, and Part I. of the schedule annexed to the said Act.

3. Any railway or canal company, which for the purposes of this Act shall include the owners, lessees, or proprietors of any canal or inland navigation, may, in case it desires to be heard by counsel, agents, and witnesses against any application for a certificate under The Railway Companies Powers Act, 1864, or for a certificate authorizing any proposed undertaking under The Railways Construction Facilities Act, 1864, (each

of which Acts is in this Act respectively referred to as the Act of Application,) lodge at the office of the Board of Trade, within the time prescribed by the schedule to this Act annexed, a notice in writing to that effect (in this Act referred to as a notice of opposition), in the forms set forth in the same schedule, with such variations as circumstances require.

Where a notice of opposition has been lodged the Board of Trade may nevertheless, if they think fit, proceed upon the application, but they shall in such case settle a Provisional Certificate in accordance with the provisions of this Act.

Every Provisional Certificate under this Act shall be settled in like manner, shall certify to the like effect, and contain the like provisions in every respect as if the same were a Draft Certificate settled by the Board of Trade, under the authority of the Act of Application in a like case, but where no notice of opposition was lodged.

When any such Provisional Certificate is confirmed in manner by this Act provided, the same shall have all the force and operation of a certificate duly made and issued by the Board of Trade, under the authority of the Act of Application, but previously to such confirmation it shall not be of any validity whatsoever.

When any Provisional Certificate is settled under this Act notice thereof shall be given by the promoters in like manner as if the same were a Draft Certificate under the Act of Application according to the provisions of such Act in that behalf.

The costs of and connected with the preparation and making of each Provisional Certificate shall be paid by the promoters, and the Board of Trade may require the promoters to give security for such costs before they proceed with the Provisional Certificate.

4. On proof to the satisfaction of the Board of Trade that notice of such certificate was duly given in manner aforesaid, the Board of Trade shall, as soon as they conveniently can after the expiration of seven days after such proof, procure a Bill to be introduced into either House of Parliament for an Act to confirm the Provisional Certificate, which shall be set out at length in the schedule to the Bill.

If while any such Bill is pending in either House of Parliament a petition is presented against any Provisional Certificate comprised therein, the Bill, so far as it relates to the certificate petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Bill for a special Act.

The provisions of the Act of this present session of Parliament, intituled "An Act to empower Committees on Bills confirming Provisional Orders to award costs and to examine witnesses on oath," shall extend and apply to any select

committee to whom any Bill to confirm a Provisional Certificate under this Act has been referred, in like manner and subject to the same conditions in every respect as if such Provisional Certificate were a Provisional Order.

The Act of Parliament confirming any Provisional Certificate shall be deemed a Public General Act.

5. From and after the passing of this Act, section thirty-three of the said Railways Construction Facilities Act, 1864, relating to the gauge of railways, shall be and the same is hereby repealed, and every railway made under the authority of a certificate under the said Act or this Act shall be made on such gauge as shall be prescribed by such certificate.

Sections four, six, seven, and eight of the Act of the session of the ninth and tenth years of the reign of Her present Majesty, chapter fifty-seven, intituled "An Act for regulating the gauge of railways," shall apply to any railway made under the authority of any such certificate as aforesaid, and to the gauge thereby prescribed.

For the purposes of such application, the provisions of the certificate relating to gauge shall be deemed to be included in the provisions of the said Act of the ninth and tenth years of the reign of Her present Majesty, chapter fifty-seven.

6. All enactments amending, perpetuating, or otherwise affecting the enactments described in Part IV. of the schedule to the said Railways Construction Facilities Act, 1864, and which are now in force, or which may hereafter become law, shall in like manner and subject to the like variations and provisions as the enactments described in the said schedule, extend and apply, as the case may require, to the railway, and to the company or persons empowered by the certificate under the said Act or this Act to make the railway, and shall in all respects operate in relation thereto respectively as if they were expressly repeated and re-enacted in the said Act, save where the same are expressly varied or excepted by such certificates.

The SCHEDULE referred to in the foregoing Act.

### *Notice of Opposition.*

In the matter of

The Railways Companies Powers Act, 1864, and  
The Railways (Powers and Construction) Acts,  
1864, Amendment Act, 1870,  
and

The application of the Railway  
Company for a certificate, the draft whereof is  
intituled [set out title].

We, the Railway [or Canal]  
Company hereby declare and give notice that we

desire to be heard by counsel, agents, and witnesses against the granting to the above-named railway company of the powers sought to be obtained by them by the above-mentioned application.

Dated this                      day of                      18 .  
Witness *A.B.*

L.S.

We, the                      Railway [or Canal] Company hereby declare and give notice that we desire to be heard by counsel, agents, and witnesses against the above-mentioned proposed undertaking.

Dated this                      day of                      18 .  
Witness, *A.B.*

L.S.

Or,  
*Notice of Opposition.*

In the matter of  
The Railways Construction Facilities Act, 1864,  
and The Railways (Powers and Construction)  
Acts, 1864, Amendment Act, 1870,  
and  
The (proposed)                      Railway.

*Time for lodging Notice of Opposition.*

Notice of opposition by a Railway or Canal Company is to be lodged at the office of the Board of Trade, not later than the 1st day of August, or the 1st day of January, next succeeding the date of the advertisement of application, according as the same is published in the month of June or in the month of November.

## CHAP. 20.

### *Mortgage Debenture Act (1865) Amendment.*

#### ABSTRACT OF THE ENACTMENTS.

1. *This Act and 28 & 29 Vict. c. 78. to be construed together.*
  2. *Interpretation of terms.*
  3. *Repeal of sections of Principal Act.*
  4. *Nature of securities on which debentures may be founded.*
  5. *Statutory declaration in lieu of voluntary declaration.*
  6. *Company to file return in office of Land Registry.*
  7. *Registered securities charged with payment of debentures, and not applicable for any other purpose until discharged from registration.*
  8. *Proceedings on redemption of securities.*
  9. *Owner of registered security upon default of company may obtain the discharge thereof from company's debentures.*
  10. *Discharge of part of a mortgage security.*
  11. *Inspection of registers and returns.*
  12. *Additional particulars to be contained in quarterly returns to registrar.*
  13. *Value of mortgage or security shall be deemed to be amount of principal money, &c. for purpose of quarterly returns.*
  14. *If not otherwise provided, value of annuities, &c. to be estimated by an actuary.*
  15. *Form of mortgage debenture.*
  16. *Terms on which mortgage debentures may be issued.*
  17. *Entry in register of discharge of mortgage debenture.*
  18. *Company not exempt from Joint Stock Companies Acts.*
- Schedule.*

An Act to amend "The Mortgage Debenture Act, 1865."  
(4th July 1870.)

WHEREAS it is expedient that "The Mortgage Debenture Act, 1865," (herein-after called "the Principal Act,") should be amended:

Be it therefore enacted by the Queen's most

Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act shall be construed as one with "The Mortgage Debenture Act, 1865," (which is herein-after referred to as "the Principal Act,")

and may be cited for all purposes as "The Mortgage Debenture (Amendment) Act, 1870."

2. The expression "the company" when used in this Act has the same meaning as that attached to it in "the Principal Act."

3. Sections 5, 12, 14, 16, 17, 20, 24, 26, 28, and 36 of "The Mortgage Debenture Act, 1865," are hereby repealed.

4. The securities upon and in respect of which mortgage debentures may be founded and issued under the authority of "the Principal Act" shall be securities affecting property in England or Wales of the following descriptions:

- (a.) Lands, messuages, hereditaments, or real property, or some estate or interest therein:
- (b.) Rates, dues, assessments, or impositions upon the owners or occupiers of lands, messuages, hereditaments, or real property imposed by or under the authority of any Act of Parliament, public or private, Royal Charter, Commission of Sewers or Drainage, or other sufficient legal authority:
- (c.) Charges upon or affecting lands, messuages, hereditaments, or real property executed, made, given, or issued under the authority of any Act of Parliament, public or private:

But from the securities described in paragraph (a.) shall be excepted securities upon mines or mineral property, quarries, brickfields, and factories, mills, and other buildings or works for manufacturing purposes, and also securities upon leasehold estates determinable upon a life or lives, and not renewable, or held for a term of which at the date of the security less than fifty years shall be unexpired, or which are held at a rent beyond one-fourth part of the annual value of the property leased as estimated at the date of the security given to the company and verified by the statutory declaration of a surveyor as herein-after provided with respect to the value of the securities to be registered.

In construing this Act the word "securities" shall be deemed to mean such securities as above defined and restricted, and no others.

5. In lieu of the voluntary declaration required by section 10 of "the Principal Act" to be made by the surveyor or valuer therein mentioned, a statutory declaration in the same form or in the form (A.) in the schedule hereto, or to the like effect, shall hereafter be requisite.

6. Before any company shall be entitled to avail itself of the provisions of "the Principal Act" and this Act, such company shall file in the

office of the Land Registry a return containing the following and such other particulars as the registrar may from time to time require, which return shall be under the hand of one, at least, of the directors of the company and the secretary:

- (a.) The amount of the nominal capital of the company:
- (b.) The amount per share and the aggregate amount paid up on the shares:
- (c.) The assets or property of the company at the date of the return, and how invested:
- (d.) The names, addresses, and occupations of the directors and auditors of the company:
- (e.) The registered office of the company.

7. All the registered securities for the time being of the company shall be charged with the payment of the principal moneys and interest from time to time payable upon or in respect of all the mortgage debentures of the company for the time being issued and outstanding, and no registered security, until discharged therefrom, as herein-after provided, shall be applicable to or available for any other purpose than the satisfaction of such principal moneys and interest, or be transferred, disposed of, or otherwise dealt with by the company, unless and until the same shall have been discharged from registration in the manner herein-after provided: Provided, nevertheless, that such registration shall not prevent the company from receiving, applying, and giving a valid discharge for any instalments payable by the terms of the deed creating the security or any annuities or interest which may from time to time be receivable upon or in respect of any such security, unless where a receiver shall have been actually appointed under the provisions of "the Principal Act."

8. Whenever any person for the time being entitled to redeem a security which has been registered under the provisions of this or "the Principal Act" has given notice to the company of his intention so to do, or if the company shall themselves at any time be desirous of freeing and discharging any registered security, the company, in the case first mentioned, shall before the day appointed for the redemption, and, in the case secondly mentioned, may at any time make application to the registrar for the purpose of having such respective security freed and discharged from the charge of the mortgage debentures issued by the company, and upon its being made to appear to his satisfaction that the aggregate of the principal sums secured by all the mortgage debentures of the company then outstanding does not exceed the total amount (to be ascertained in the manner provided by "the Principal Act") of the registered securities of the company at the time being, exclusive of that proposed to be discharged, he shall allow the

same to be so freed and discharged, and shall cause an entry to be made in the register of securities of the said security being discharged, and shall on request re-deliver to the company the several deeds or instruments to which such security relates, and which were delivered to the registrar for registration under the provisions in that behalf contained in "the Principal Act," and such entry shall be conclusive evidence of such discharge.

9. If in the case first mentioned in the last preceding section the company shall have made default in procuring the discharge on or before the day appointed for redemption, the person so entitled to redeem, and who has given notice as aforesaid of his intention to redeem, may apply to the High Court of Chancery, by summons, calling upon the company to show cause why such security is not so discharged, and upon hearing such summons the judge shall appoint a day by which the discharge shall be obtained, and in default thereof shall order that the amount of principal and interest money due upon such security shall, by a day to be named in the order, be paid into the bank, to the credit of the Accountant-General of the Court of Chancery, to the account of the company's mortgage debentures, and shall make such order as to the costs of and incidental to the application as the court may deem just.

Upon production to and deposit with the land registrar of such order, together with the Accountant-General's certificate of such payment into court, as aforesaid, the registrar shall make an entry in the proper register of securities of the discharge of such security from the company's mortgage debentures, and shall deliver to the person named in such order the several deeds and instruments to which such security relates, and which were delivered to the registrar under the provisions herein contained.

Upon the company proving to the satisfaction of the court by the production of a certificate of the registrar, either that a security at least equal in value to the amount so paid into court as aforesaid has been registered as aforesaid, or that an equivalent amount of the company's mortgage debentures has been cancelled, the court shall direct the payment out of court to the company of the amount so paid in, together with any dividends that may have accrued due thereon in the meantime.

10. Whenever any person who has executed a mortgage security which has been registered under the provisions of this or the Principal Act is desirous to redeem a part of such security, and of having such part freed and discharged from the mortgage debentures for the time being issued by the company, and then outstanding, the company may make application to the registrar for

the purpose of having such part freed and discharged from such mortgage debentures; and upon it being made to appear to the satisfaction of the registrar, by the statutory declaration of a surveyor approved by the Inclosure Commissioners, that the principal moneys secured on the residue of the mortgage security do not exceed two thirds of the value thereof, and upon it also being made to appear to the satisfaction of the registrar that the aggregate of the principal sums secured by all the mortgage debentures of the company then outstanding does not exceed the total amount (to be ascertained in manner provided by the Principal Act) of the registered securities of the company at the time being, exclusive of the part of the security proposed to be discharged, he shall allow the same to be so freed and discharged, and shall cause an entry to be made in the register of securities of such discharge, and shall, on request, re-deliver to the company the several deeds or instruments, if any, which exclusively relate to the part so discharged, and which were delivered to the registrar for registration under the provisions in that behalf contained in the Principal Act, and such entry shall be conclusive evidence of such discharge.

11. Subject to the regulations mentioned in section 19 of "the Principal Act," and on payment of such fees as the registrar, with the sanction of the Lord Chancellor, from time to time prescribes, any person may inspect and make copies of and extracts from the register of securities, the register of mortgage debentures, and the returns made by the company to the registrar, under the provisions of "the Principal Act."

12. In addition to the particulars required to be contained in the quarterly return to be made by the company to the registrar by the 23rd section of "the Principal Act," every such quarterly return shall contain the following particulars:—

- (a.) The names, addresses, and occupations of the directors and auditors of the company;
- (b.) The registered office of the company.

13. Where by any mortgage or other like security to the company the principal is expressly distinguished from the interest, and such principal is made payable by periodical payments, the amount or value of such mortgage or security shall for the purpose of the quarterly returns be deemed to be the amount of principal money exclusive of interest remaining unpaid thereon at the date of the quarterly return.

14. In all cases not provided for by the last section the amount or value of the annuities and other periodical payments to be comprised in the quarterly returns shall be ascertained or estimated by an actuary approved by the registrar.

15. Every mortgage debenture from time to time issued by the company shall be a deed under the common seal of the company duly stamped as a mortgage for the amount secured, and bearing the signatures of at least two of the directors, and the counter-signature of the manager, secretary, or accountant of the company, and shall be in accordance with the form (B.) in the schedule to this Act, or as near thereto as circumstances admit.

16. The mortgage debentures shall be for the payment of principal sums, either at a fixed time to be named therein, not less than six months nor exceeding ten years from the date, or at any time on six calendar months previous notice being given to the company by the holder for the

time being of the mortgage debenture, or by the company to the holder for the time being of the mortgage debenture, with interest thereon in the meantime at such rate as may be agreed, payable half yearly or otherwise, and no mortgage debenture shall be issued for a less principal sum than fifty pounds.

17. When a mortgage debenture is produced by the company to the registrar discharged or cancelled, he shall make in the register of mortgage debentures an entry of the discharge thereof.

18. Nothing in this Act shall exempt the company from the provisions of any Act relating to joint stock companies, and applicable to the company.

### SCHEDULE.

#### FORM (A.)

##### *Form of the Surveyor's or Valuer's Declaration.*

[Here insert a copy of the return to be made by the company, on application to register securities, distinguishing each security by a separate letter or number.]

I, \_\_\_\_\_ of \_\_\_\_\_ do solemnly and sincerely declare, that the information above contained with respect to the security numbered or lettered \_\_\_\_\_ is to the best of my information and belief correct, and that the value of the property above described (and, if the borrower's interest is of a limited nature, the value of the borrower's estate and interest in the property above described) exceeds the amount of £ \_\_\_\_\_ the advance made by the company in respect thereof (and, if there are prior charges, of the prior charges thereon), to the extent of one third at least of such value (and, if the borrower's interest is that of a leaseholder, that the rent reserved by the lease under which the property above described is held does not exceed one fourth of the annual value thereof at the present time).

[A separate declaration shall be made in respect of each security, and where the mortgage or charge is secured exclusively upon any of the securities comprised in sec. 5 (b and c) omit from the word "declare" to the end, and insert "to the best of my information and belief the security above described and numbered \_\_\_\_\_ is now of the value of £ \_\_\_\_\_."]

#### FORM (B.)

##### *Form of Mortgage Debenture.*

The \_\_\_\_\_ Company.

##### *Mortgage Debenture No. \_\_\_\_\_*

By virtue of "The Mortgage Debenture Act, 1865," we, the \_\_\_\_\_ company, in consideration of £ \_\_\_\_\_ paid to us by \_\_\_\_\_ do hereby charge all the registered securities of the company with the payment to the said A.B., his executors, administrators, and assigns, of the sum of £ \_\_\_\_\_ and interest thereon at the rate of \_\_\_\_\_ per cent. per annum, which sum of £ \_\_\_\_\_ is to be paid and payable to the said A.B., his executors, administrators, and assigns, at the \_\_\_\_\_ [place] on the \_\_\_\_\_ day of \_\_\_\_\_ (or on the expiration of six calendar months from the leaving at the registered office of the company of a notice in writing from the said A.B., his executors, administrators, or assigns, requiring such payment, or on the expiration of six calendar months from the day succeeding the posting of a registered letter containing notice in writing from the company of their intention to repay the said sum of £ \_\_\_\_\_), with interest on the same at the rate of \_\_\_\_\_ per cent. per annum, payable half-yearly at said place on every \_\_\_\_\_ day of \_\_\_\_\_ and \_\_\_\_\_ hereby undertake to pay said sum of £ \_\_\_\_\_ and interest at the rate aforesaid as above mentioned.

Given under our common seal, this \_\_\_\_\_ day of \_\_\_\_\_

A.B., Director.

C.D., Director.

Countersigned, G.F., Secretary.

Registered

## CHAP. 21.

*Bridgwater and Beverley Disfranchisement.*

## ABSTRACT OF THE ENACTMENTS.

1. *Disfranchisement of Bridgwater and Beverley.*
2. *Persons reported guilty of bribery in Bridgwater disqualified as voters for the western division of Somerset in respect of qualification arising in said borough.*
3. *Persons reported guilty of bribery in Beverley disqualified as voters for the east riding of Yorkshire in respect of qualification arising in said borough.*
4. *Persons against whom criminal proceedings instituted not to be disqualified until adjudged guilty of such bribery.*
5. *Copies of reports printed by Queen's Printer to be evidence.*

An Act to disfranchise the Boroughs of  
Bridgwater and Beverley.

(4th July 1870.)

WHEREAS representations were made to Her Majesty, in joint addresses of both Houses of Parliament, to the effect that the judges selected in pursuance of The Parliamentary Elections Act, 1868, for the trial of the petitions complaining of undue elections and returns for the boroughs of Bridgwater and Beverley at the elections of members to serve in Parliament, respectively held for the said boroughs in the month of November one thousand eight hundred and sixty-eight, had respectively reported to the House of Commons, as to the said borough of Bridgwater that there was reason to believe that bribery extensively prevailed at the said election, and as to the said borough of Beverley that corrupt practices extensively prevailed at the said election:

And whereas, in pursuance of such representations, Commissioners were appointed under two several commissions, both dated the twenty-third day of June one thousand eight hundred and sixty-nine, for the purpose of making inquiry into the existence of such bribery and corrupt practices, in pursuance of the Act of Parliament passed in the sixteenth year of the reign of Her present Majesty, chapter fifty-seven, intituled "An Act to provide for the more effectual inquiry into the existence of corrupt practices at elections for members to serve in Parliament:"

And whereas the Commissioners so appointed reported to Her Majesty:

- (1.) As respects the said borough of Bridgwater, that corrupt practices had extensively prevailed at the said election held in the said month of November one thousand eight hundred and sixty-eight, and at every preceding election for the borough of Bridgwater into which they had inquired, up to and inclusive of the earliest in date,

that is to say, the general election held in the year one thousand eight hundred and thirty-one:

- (2.) As respects the said borough of Beverley, that corrupt practices had prevailed in Beverley at the election of March one thousand eight hundred and fifty-seven, and that corrupt practices had extensively prevailed in Beverley at the election of August one thousand eight hundred and fifty-seven, and at the elections of the years one thousand eight hundred and fifty-nine, one thousand eight hundred and sixty, one thousand eight hundred and sixty-five, and the said election of the year one thousand eight hundred and sixty-eight:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. That from and after the passing of this Act the boroughs of Bridgwater and Beverley shall respectively cease to return any member or members to serve in Parliament.

2. Whereas the Commissioners appointed for the purpose of making inquiry into the existence of corrupt practices in the said borough of Bridgwater, by their second report, dated the twentieth day of December one thousand eight hundred and sixty-nine, reported to Her Majesty that the persons named in the schedules marked (Y.) and (Z.) annexed to their said report had been guilty of giving or receiving bribes at the said election in the year one thousand eight hundred and sixty-eight: Be it enacted, that none of the persons so named in the said schedules shall have the right of voting for the western division of the county of Somerset in respect of a qualification situated within the said borough of Bridgwater.



3. Whereas the Commissioners appointed for the purpose of making inquiry into the existence of corrupt practices in the borough of Beverley, by their report, dated the twenty-ninth day of January one thousand eight hundred and seventy, reported to Her Majesty that certain persons named in the schedule annexed to their said report had been guilty of bribery, in either giving or receiving bribes, at the said election in the year one thousand eight hundred and sixty-eight or elections indicated in such schedule: Be it enacted, that none of the persons so named in the said schedule, except Luke Hind, as having been so guilty of bribery at the said election held in the year one thousand eight hundred and sixty-eight, shall have the right of voting for the east riding of Yorkshire in respect of a qualification situated within the said borough of Beverley.

4. No person against whom any criminal proceeding has been instituted by the Attorney General for such bribery shall be subject to any disqualification under this Act until he shall be or have been adjudged guilty of such bribery.

5. Any copy of either of the said reports by the said Commissioners appointed for the purpose of making inquiry into the existence of corrupt practices in either of the said boroughs of Bridgwater or Beverley, with the schedules thereunto annexed, purporting to be printed by the Queen's Printer, shall, for the purposes of this Act, be deemed to be sufficient evidence of either of the said reports, and of the schedules annexed thereto.

## CHAP. 22.

### *Turnpike Trusts Arrangements.*

#### ABSTRACT OF THE ENACTMENTS.

##### 1. *Provisional order confirmed. Schedule.*

An Act to confirm a certain Provisional Order made under an Act of the fifteenth year of Her present Majesty, to facilitate arrangements for the relief of Turnpike Trusts. (4th July 1870.)

WHEREAS by an Act of the fifteenth year of Her Majesty, chapter thirty-eight, "to facilitate arrangements for the relief of Turnpike Trusts, and to make certain provisions respecting exemptions from Tolls," herein-after referred to as the Principal Act, power is given to one of Her Majesty's Principal Secretaries of State to make provisional orders for reducing the rate of interest and for extinguishing the arrears of interest on mortgage debts charged or secured on the revenues of turnpike roads, in cases where such revenues are insufficient for the payment in full of the interest charged thereon:

And whereas by the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter forty-six, the Principal Act is extended to turnpike roads the Acts relating to which are continued by any

annual Turnpike Acts Continuance Act, although their revenues are not insufficient for such payments as aforesaid:

And whereas, in pursuance of the Principal Act, and the said Act extending the same, the provisional order referred to in the schedule hereto has been made by Her Majesty's Principal Secretary of State for the Home Department, and there are stated in the said schedule the date of such order, and such particulars relating thereto as are therein specified:

And whereas it is expedient that the said provisional order should be confirmed and made absolute:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The provisional order, the date of which is set forth in the first column of the said schedule, is hereby confirmed, and the provisions thereof shall be of the like force and effect as if it had been expressly enacted by Parliament.



## SCHEDULE.

Date of Provisional Order.	TITLE OF LOCAL ACT.	Amount of Principal Debt.	Interest to be reduced to the under-mentioned Rates per Annum.	Dates from which reduced Rate of Interest to commence.
1870. 25 Feb.	3 Wm. 4. c. lxxiv., "An Act for more effectually repairing " and otherwise improving the " road from Warrington to " Wigan in the County Palatine of Lancaster "	£ s. d. 14,469 0 0	{ One penny per cent.	{ 21 Aug. 1868 (certain arrears extinguished).

## CHAP. 23.

*Felony.*

## ABSTRACT OF THE ENACTMENTS.

1. *Forfeiture, &c. abolished.*
2. *Conviction for treason or felony to be a disqualification for offices, &c.*
3. *Persons convicted of treason or felony may be condemned in costs.*
4. *Compensation to persons defrauded or injured by felony.*
5. *The word "forfeiture" defined.*
6. *The word "convict" defined.*
7. *When convict shall cease to be subject to operation of the Act.*
8. *Convict disabled to sue for or to alienate property, &c.*
9. *The Crown may appoint administrators of any convict's property.*
10. *Convict's property to vest in administrators on their appointment.*
11. *Remuneration of administrators.*
12. *Administrators to have administration of property during sentences of convicts.*
13. *Administrator to pay out of property costs of prosecution and costs of executing this Act.*
14. *Administrator may pay out of property debts or liabilities of convict.*
15. *Administrators may make compensations out of property to persons defrauded by criminal acts of convict.*
16. *Administrator may make allowances out of property for support of family of convict.*
17. *Exercise of administrator's power as to priority of payments; payments by administrator for purposes of Act not to be called in question.*
18. *Property to be preserved for convict, and to revert to him or his representatives on completion of sentence, pardon, or death.*
19. *Administrators not to be liable, except for what they receive.*
20. *Administrator to receive costs of suits of property as between solicitor and client.*
21. *If no administrator, interim curator may be appointed by justices.*
22. *Proceedings before justices.*
23. *Removal of interim curator for cause shown.*
24. *Powers of interim curator.*
25. *Personal property may be sold by interim curator under special order of justices or court.*
26. *Proceedings by or against interim curator not to abate if administrator is appointed.*
27. *Execution of judgments against convict provided for.*
28. *Proceedings may be taken to make administrator or interim curator, &c. accountable before property reverts to convict.*

29. *Administrator, &c. to be accountable to convict when property reverts.*  
 30. *Property of convict acquired while lawfully at large not to be subject to the operation of this Act.*  
 31. *Judgment in cases of high treason.*  
 32. *Saving of general law as to felony.*  
 33. *Extent of Act.*

**An Act to abolish Forfeitures for Treason and Felony, and to otherwise amend the Law relating thereto.**

(4th July 1870.)

WHEREAS it is expedient to abolish the forfeiture of lands and goods for treason and felony, and to otherwise amend the law relating thereto :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say.)

1. From and after the passing of this Act, no confession, verdict, inquest, conviction, or judgment of or for any treason or felony or felo de se shall cause any attainder or corruption of blood, or any forfeiture or escheat, provided that nothing in this Act shall affect the law of forfeiture consequent upon outlawry.

2. Provided nevertheless, that if any person hereafter convicted of treason or felony, for which he shall be sentenced to death, or penal servitude, or any term of imprisonment with hard labour, or exceeding twelve months, shall at the time of such conviction hold any military or naval office, or any civil office under the Crown or other public employment, or any ecclesiastical benefice, or any place, office, or emolument in any university, college, or other corporation, or be entitled to any pension or superannuation allowance payable by the public, or out of any public fund, such office, benefice, employment, or place shall forthwith become vacant, and such pension or superannuation allowance or emolument shall forthwith determine and cease to be payable, unless such person shall receive a free pardon from Her Majesty, within two months after such conviction, or before the filling up of such office, benefice, employment, or place if given at a later period; and such person shall become, and (until he shall have suffered the punishment to which he had been sentenced, or such other punishment as by competent authority may be substituted for the same, or shall receive a free pardon from Her Majesty,) shall continue thenceforth incapable of holding any military or naval office, or any civil office under the Crown or other public employment, or any ecclesiastical benefice, or of being elected, or sitting, or voting as a member of either House of Parliament, or of

exercising any right of suffrage or other parliamentary or municipal franchise whatever within England, Wales, or Ireland.

3. It shall be lawful for any Court by which judgment shall be pronounced or recorded, upon the conviction of any person for treason or felony, in addition to such sentence as may otherwise by law be passed, to condemn such person to the payment of the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence of which he shall be convicted, if to such court it shall seem fit so to do; and the payment of such costs and expenses, or any part thereof, may be ordered by the Court to be made out of any moneys taken from such person on his apprehension, or may be enforced at the instance of any person liable to pay, or who may have paid the same, in such and the same manner (subject to the provisions of this Act) as the payment of any costs ordered to be paid by the judgment or order of any Court of competent jurisdiction in any civil action or proceeding may for the time being be enforced: Provided, that in the meantime and until the recovery of such costs and expenses from the person so convicted as aforesaid, or from his estate, the same shall be paid and provided for in the same manner as if this Act had not passed; and any money which may be recovered in respect thereof from the person so convicted, or from his estate, shall be applicable to the reimbursement of any person or fund by whom or out of which such costs and expenses may have been paid or defrayed.

4. It shall be lawful for any such Court as aforesaid, if it shall think fit, upon the application of any person aggrieved, and immediately after the conviction of any person for felony, to award any sum of money, not exceeding one hundred pounds, by way of satisfaction or compensation for any loss of property suffered by the applicant through or by means of the said felony, and the amount awarded for such satisfaction or compensation shall be deemed a judgment debt due to the person entitled to receive the same from the person so convicted, and the order for payment of such amount may be enforced in such and the same manner as in the case of any costs ordered by the Court to be paid under the last preceding section of this Act.

5. The word "forfeiture," in the construction of this Act, shall not include any fine or penalty imposed on any convict by virtue of his sentence.

6. The expression "convict," as herein-after used, shall be deemed to mean any person against whom, after the passing of this Act, judgment of death, or of penal servitude, shall have been pronounced or recorded by any Court of competent jurisdiction in England, Wales, or Ireland upon any charge of treason or felony.

7. When any convict shall die or be made bankrupt, or shall have suffered any punishment to which sentence of death if pronounced or recorded against him may be lawfully commuted, or shall have undergone the full term of penal servitude for which judgment shall have been pronounced or recorded against him, or such other punishment as may by competent authority have been substituted for such full term, or shall have received Her Majesty's pardon for the treason or felony of which he may have been convicted, he shall thenceforth, so far as relates to the provisions herein-after contained, cease to be subject to the operation of this Act.

8. No action at law or suit in equity for the recovery of any property, debt, or damage whatsoever shall be brought by any convict against any person during the time while he shall be subject to the operation of this Act; and every convict shall be incapable, during such time as aforesaid, of alienating or charging any property, or of making any contract, save as herein-after provided.

9. It shall be lawful for Her Majesty, or for any person in that behalf authorized by Her Majesty, under Her Royal Sign Manual (and which authority may be given either generally or with reference to any particular case), if to Her Majesty or to the person so authorized it shall seem fit, by writing under Her Majesty's Royal Sign Manual, or under the hand of the person so authorized as aforesaid, to commit the custody and management of the property of any convict, during Her Majesty's pleasure, to an administrator, to be by such writing appointed in that behalf; and every such appointment may be revoked by the same or the like authority by which it is made; and upon any determination thereof, either by revocation or by the death of any such administrator, a new administrator may be appointed by the same or the like authority from time to time; and every such new administrator shall, upon his appointment, be and be deemed to be the successor-in-law of the former administrator; and all property vested in, and all powers given to, such former administrator, by virtue of this Act, shall thereupon devolve to and become vested in such successor, who shall be bound by all acts lawfully done by such former administrator during the continuance of his office; and the provisions herein-after con-

tained with reference to any administrator shall, in the case of the appointment of more than one person, apply to such administrators jointly.

10. Upon the appointment of any such administrator in manner aforesaid, all the real and personal property, including choses in actions, to which the convict named in such appointment was at the time of his conviction, or shall afterwards while he shall continue subject to the operations of this Act, become or be entitled, shall vest in such administrator for all the estate and interest of such convict therein.

11. If, in the instrument by which any such administrator is appointed, provision shall be made for the remuneration of such administrator out of the property of the convict, the said administrator may receive and retain for his own benefit such remuneration accordingly.

12. The administrator shall have absolute power to let, mortgage, sell, convey, and transfer any part of such property as to him shall seem fit.

13. It shall be lawful for the administrator to pay or cause to be paid out of such property, or the proceeds thereof, all costs and expenses which the convict may have been condemned to pay; and also all costs, charges, and expenses incurred by such convict in and about his defence; and also all such costs, charges, and expenses as the said administrator may incur or be put to in or about the carrying this Act into execution with reference to such property, or with reference to any claims which may be made thereon.

14. The administrator may cause payment or satisfaction to be made out of such property of any debt or liability of such convict which may be established in due course of law, or may otherwise be proved to his satisfaction, and may also cause any property which may come to his hands to be delivered to any person claiming to be justly entitled thereto, upon the right of such person being established in due course of law, or otherwise to his satisfaction.

15. The administrator may cause to be paid or satisfied out of such property such sum of money by way of satisfaction or compensation for any loss of property or other injury alleged to have been suffered by any person through or by means of any alleged criminal or fraudulent act of such convict, as to him shall seem just, although no proof of such alleged criminal or fraudulent act may have been made in any Court of law or equity; and all claims to any such satisfaction or compensation may be investigated in such manner as the administrator shall think fit, and

the decision of the administrator thereon shall be binding: Provided always, that nothing in this Act shall take away or prejudice any right, title, or remedy to which any person alleging himself to have suffered any such loss or injury would have been entitled by law if this Act had not passed.

16. The administrator may cause such payments and allowances for the support or maintenance of any wife or child, or reputed child of such convict, or of any other relative or reputed relative of such convict dependent upon him for support, or for the benefit of the convict himself, if and while he shall be lawfully at large under any licence, as to such administrator shall seem fit, to be made from time to time out of such property, or the income thereof.

17. The several powers herein-before given to the said administrator, or any of them, may be exercised by him in such order and course, as to priority of payments or otherwise, as he shall think fit; and all contracts of letting or sale, mortgages, conveyances, or transfers of property, *bonâ fide* made by the said administrator under the powers of this Act, and all payments or deliveries over of property *bonâ fide* made by or under the authority of the said administrator for any of the purposes herein-before mentioned, shall be binding; and the propriety thereof, and the sufficiency of the grounds on which the said administrator may have exercised his judgment or discretion in respect thereof, shall not be in any manner called in question by such convict, or by any person claiming an interest in such property by virtue of this Act.

18. Subject to the powers and provisions herein-before contained, all such property and the income thereof shall be preserved and held in trust by the said administrator, and the income thereof may, if and when the said administrator shall think proper, be invested and accumulated in such securities as he shall from time to time think fit, for the use and benefit of the said convict and his heirs or legal personal representatives, or of such other persons as may be lawfully entitled thereto, according to the nature thereof; and the same, and the possession, administration, and management thereof, shall re-vest in and be restored to such convict upon his ceasing to be subject to the operation of this Act, or in and to his heirs or legal personal representatives, or such other persons as may be lawfully entitled thereto; and all the powers and authorities by this Act given to the said administrator shall from thenceforth cease and determine, except so far as the continuance thereof may be necessary for the care and preservation of such property or any part thereof, until the same shall be claimed by some

person lawfully entitled thereto, or for obtaining payment out of such property, or of the proceeds thereof, of any liabilities, or any costs, charges, or expenses, for which provision is made by this Act; for which purposes such powers and authorities shall continue to be in force until possession of such property shall be delivered up by the said administrator to some person being or claiming to be lawfully entitled thereto.

19. The said administrator shall not be answerable to any person for any property which shall not actually have come to his hands by virtue of this Act, nor for any loss or damage which may happen through any mere omission or non-feasance on his part to any property vested in him by virtue hereof.

20. The costs as between solicitor and client of every action or suit which may be brought against the said administrator with reference to any such property as aforesaid, whether during the time while the same shall be and continue vested in him under this Act or after the same shall cease to be so vested, and all charges and expenses properly incurred by him with reference thereto, shall be a first charge upon and shall be paid out of such property, unless the Court before which such action is tried or such suit is heard shall think fit otherwise to order.

21. If no such administrator as aforesaid shall have been appointed an interim curator of the property of any convict may be appointed by any justices of the peace in petty sessions assembled, or, where there are no petty sessions, by any justice of the peace having jurisdiction in the place where such convict before his conviction shall have last usually resided, upon the application of any person who shall be able to satisfy such justice that the application is made *bonâ fide* with a view to the benefit of the convict or of his family, or to the due and proper administration and management of his property and affairs; and the interim curator to be appointed may be either the person making the application or any other person willing to accept the office, and competent to discharge its duties, as to such justice shall seem fit.

22. Before making any such appointment the justice shall require the applicant to make oath that no administrator or interim curator of the property of such convict has been to his knowledge or belief already appointed; and the applicant shall also state upon oath, to the best of his knowledge and belief, who are the nearest relatives (including any husband or wife) of such convict, and (if any such there be) where they are residing, and whether any and which of them have consented to or have had notice of such application;

and it shall be competent for such justice to require notice of such application to be given to all such persons and in such manner as to such justice shall seem fit.

23. Any interim curator so appointed may be removed, for any cause shown to the satisfaction of the justices or justice or the Court, upon the application of any relative of the convict, or of any person interested in the due and proper administration and management of his property and affairs, either by the petty sessions or justice by whom he was appointed (or, in the event of such justice dying or being unable to act, by any other justice having the like jurisdiction,) or by any Court in which proceedings for an account may be instituted as herein-after provided; and upon the death or removal of any such interim curator a new interim curator may be appointed in the same manner and by the like authority as aforesaid, or (in case any such proceedings shall be then depending) by the Court in which any such proceedings shall be so depending as aforesaid.

24. Every interim curator so appointed as aforesaid shall have power (unless and until an administrator shall be appointed under this Act, in which case the authority of such interim curator shall thenceforth cease and determine,) to sue in his own name as such interim curator, at law or in equity, for the possession and recovery of any part of the property in respect of which he shall have been so appointed, or for damages in respect of any injury thereto, and to defend in his own name as such interim curator any action or suit brought against such convict or against himself in respect of such property, and to receive and give legal discharges for all rents, dividends, interest, and income of or arising from such property, and also to receive and give discharges for any debts due to such convict, or forming part of his property, and to pay and discharge all or any debts due from such convict out of such property, and to settle and adjust accounts with any debtor or creditor of such convict, and generally to manage and administer the property of such convict; and also to make or cause to be made such payments and allowances for the support or maintenance of any wife or child of such convict, or of any other relative dependent on him for support, as shall be specially authorized by any such justice or Court aforesaid (who shall have power from time to time to authorize the same), or by any other Court having competent jurisdiction to authorize the same, out of the income of such property, or (in case such income shall be insufficient for that purpose) out of the capital thereof; and every such interim curator shall be entitled to retain out of such property, or out of the income thereof, all his costs, charges, and ex-

penses properly incurred in and about the discharge of his duties as such curator.

25. Any personal property of such convict may be sold and transferred by such interim curator by and with the authority of such justice or Court as aforesaid, or of any other Court having competent jurisdiction to order the same, but not otherwise; and such interim curator shall be accountable for the proceeds of any property so sold in the same manner as for such property while remaining unsold.

26. All proceedings at law or in equity duly instituted by or against any such interim curator may (in case of an administrator or a new interim curator being afterwards appointed) be continued by or against such administrator or such new interim curator without any abatement thereof, the appointment of such administrator or new interim curator being entered by way of suggestion on the record, or otherwise stated upon the proceedings, according to the practice of such Court; and all acts lawfully done and contracts lawfully made by such interim curator with respect to any property of such convict before the appointment of such administrator or such new interim curator shall be binding upon such administrator or such new interim curator after his appointment.

27. All judgments or orders for the payment of money of any Court of law or equity against such convict which shall have been duly recovered or made, either before or after his conviction, may be executed against any property of such convict under the care and management of any such interim curator as aforesaid, or in the hands of any person who may have taken upon himself the possession or management thereof without legal authority, in the same manner as if such property were in the possession or power of such convict; and all such judgments or orders may likewise be executed by writ of scire facias or otherwise, according to the practice of the Court, against any such property which may be vested in any administrator of the property of such convict under the authority of this Act.

28. It shall be competent for Her Majesty's Attorney General, or other the chief law officer of the Crown for the time being in any part of Her Majesty's dominions, or for any person who (if such convict were dead intestate) would be his heir at law, or entitled to his personal estate, or any share thereof, under the Statutes of Distribution or otherwise, or for any person authorized by Her Majesty's Attorney General, or by such chief law officer as aforesaid, in that behalf, to apply in a summary way to any Court which (if such convict were dead) would have jurisdiction

to entertain a suit for the administration of his real or personal estate, to issue a writ of summons calling upon any administrator or interim curator of the property of such convict appointed under this Act, or any person who without legal authority shall have possessed himself of any part of the property of such convict, to account for his receipts and payments in respect of the property of such convict, in such manner as such Court shall direct; and it shall be lawful for such Court thereupon to issue such writ of summons, and to enforce obedience thereto, and to all orders and proceedings of such Court consequent thereon, in the same manner as in any other case of process lawfully issuing out of such Court; and such Court shall thereupon have full power, jurisdiction, and authority to take all such accounts, and to make and give all such orders and directions, as to it shall seem proper or necessary for the purpose of securing the due and proper care, administration, and management of the property of such convict, and the due and proper application of the same and of the income thereof, and the accumulation and investment of such balances, if any, as may from time to time remain in the hands of any such administrator or interim curator, or other person as aforesaid in respect of such property; and so long as any such proceedings shall be pending in any such Court, every such administrator or interim curator, or other person, shall act in the exercise of all powers vested in him under this Act, or otherwise in all respects as such Court shall direct; and it shall be lawful for such Court (if it shall think fit) to authorize and direct any act to be done by any such interim curator which might competently be done by an administrator duly appointed under this Act.

29. Subject to the provisions of this Act, every such administrator, interim curator, and other

person as aforesaid shall, from and after the time when such convict shall cease to be subject to the operation of this Act, be accountable to such convict for all property of such convict which shall have been by him possessed or received and not duly administered, in the same manner in which any guardian or trustee is now accountable to his ward or cestuique trust, but subject nevertheless and without prejudice to the administration and application of such property under and according to the powers of this Act.

30. Provided always, that no property acquired by a convict during the time which he shall be lawfully at large under any licence shall vest in any administrator appointed under this Act, but such convict shall be entitled thereto without any interference on the part of any administrator or interim curator appointed under this Act, and during the time last aforesaid the disabilities mentioned in the eighth section of this Act shall, as to such convict, be suspended.

31. From and after the passing of this Act, such portions of the Acts of the thirtieth year of George the Third, chapter forty-eight, and the fifty-fourth year of George the Third, chapter one hundred and forty-six, as enacts that the judgment required by law to be awarded against persons adjudged guilty of high treason shall include the drawing of the person on a hurdle to the place of execution, and, after execution, the severing of the head from the body, and the dividing of the body into four quarters, shall be and are hereby repealed.

32. Provided always, that nothing in this Act shall be deemed to alter or in anywise affect the law relating to felony in England, Wales, or Ireland, except as herein is expressly enacted.

33. This Act shall not apply to Scotland.

---

#### CHAP. 24.

#### *The Metropolitan Board of Works (Loans) Act, 1870.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Short titles and construction.*
2. *Composition for stamp on transfers of existing stock.*
3. *Composition for stamp on transfers of future stock.*
4. *Composition for stamp on transfers of terminable annuities.*
5. *Exemption of transfers from stamp.*
6. *Payment of composition, and recovery thereof.*
7. *Amendment of section 11. of former Act.*
8. *Alteration of reference as to stock certificates.*

An Act for making further provision respecting the borrowing of money by the Metropolitan Board of Works.

(4th July 1870.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as The Metropolitan Board of Works (Loans) Act, 1870, and shall have effect as one Act with The Metropolitan Board of Works (Loans) Act, 1869, in this Act referred to as the principal Act; and the principal Act and this Act may be cited together as The Metropolitan Board of Works (Loans) Acts, 1869 and 1870.

2. By way of composition for stamp duty chargeable on transfers of metropolitan consolidated stock issued before the passing of this Act, the Metropolitan Board of Works shall, within seven days after the passing of this Act, pay to the Commissioners of Inland Revenue the sum of nine thousand eight hundred and ninety-five pounds two shillings and sixpence.

3. By way of composition for stamp duty chargeable on transfers of metropolitan consolidated stock from time to time issued after the passing of this Act, the Metropolitan Board of Works shall, within seven days after issuing any such stock, pay to the Commissioners of Inland Revenue a sum calculated at the rate of seven shillings and sixpence for every full sum of one hundred pounds of stock issued, and also for every fractional part of one hundred pounds of stock issued to any holder.

4. By way of composition for stamp duty chargeable on metropolitan annuities from time to time granted after the passing of this Act, the Metropolitan Board of Works shall, within seven days after granting any such annuity, pay to the Commissioners of Inland Revenue a sum calculated at the rate of seven shillings and sixpence for every full sum of one hundred pounds, and also for any fractional part of one hundred pounds, of the value of the annuity, which value shall be computed in such manner as the Treasury from time to time direct.

5. In consideration of the provisions for composition in this Act contained, transfers of metropolitan consolidated stock issued or to be issued, and stock certificates in respect thereof, and transfers of metropolitan annuities, are hereby, notwithstanding anything in the principal Act, exempted from stamp duty.

6. All sums payable by the Metropolitan Board of Works under this Act by way of composition for stamp duty shall be paid out of money raised or to be raised by the issuing of metropolitan consolidated stock, or by the granting of metropolitan annuities; and the same shall be recoverable as stamp duties.

7. Section eleven of the principal Act shall have effect as if in paragraph (1.) thereof "transferor" were substituted for "transferee."

8. In the event of any Act being passed in the present session of Parliament containing provisions in substitution for The Stock Certificate Act, 1863, section sixteen of the principal Act shall have effect as if the substituted provisions were referred to in that section in lieu of The Stock Certificate Act, 1863.

---

## CHAP. 25.

### *Norwich Voters Disfranchisement.*

---

#### ABSTRACT OF THE ENACTMENTS.

1. *Disfranchisement of certain voters of the city of Norwich.*
  2. *Persons against whom proceedings have been instituted not disqualified until adjudged guilty of bribery.*
  3. *Evidence of report.*
-



### An Act to disfranchise certain Voters of the City of Norwich. (4th July 1870.)

WHEREAS the Commissioners appointed under a commission of Her Majesty, dated the twenty-third day of June one thousand eight hundred and sixty-nine, for the purpose of making inquiries into the existence of corrupt practices at the election of members to serve in Parliament for the city of Norwich, held in the month of November one thousand eight hundred and sixty-eight, have by their report, dated the fifteenth day of February one thousand eight hundred and seventy, reported to Her Majesty that the several persons named in the schedule marked A. annexed to their report were guilty of bribery; that the several persons named in the schedule marked B. annexed to their report were bribed; and that the several persons named in the schedule marked C. annexed to their report were guilty of corruptly influencing voters by treating:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. From and after the passing of this Act, none of the persons so named in the said schedules, or any of them, shall at any time hereafter have the right of voting at any election of a member or members to serve in Parliament for the city of Norwich.

2. Neither Arthur Bignold, nor Orlando D. Ray, mentioned in schedule A. annexed to the said report, nor any person against whom any criminal proceeding has been instituted by the Attorney General for such bribery, shall be subject to any disqualification under this Act until he shall be or shall have been adjudged guilty of such bribery.

3. Any copy of the said report by the said Commissioners appointed for the purpose of making inquiries into the existence of corrupt practices in the said city of Norwich, with the schedules thereunto annexed, purporting to be printed by the Queen's printers, shall, for the purposes of this Act, be deemed to be sufficient evidence of the said report, and of the schedules annexed thereto.

---

### CHAP. 26.

#### *Sale of Poisons (Ireland).*

##### ABSTRACT OF THE ENACTMENTS.

1. *Articles named in Schedule A. to be deemed poisons within meaning of this Act.*
2. *Regulations to be observed in the sale of poisons.*
3. *Adulteration of Food or Drink Act to extend to medicines.*
4. *Recovery and application of penalties.*

##### *Schedules.*

### An Act to regulate the Sale of Poisons in Ireland. (14th July 1870.)

WHEREAS it is expedient for the safety of the public that due provision should be made to regulate the sale of poisons in Ireland:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The several articles mentioned in the Schedule A. to this Act annexed shall be deemed to be poisons within the meaning of this Act; and the King and Queen's College of Physicians in Ireland may from time to time, by resolution, declare that any article other than those men-

tioned in the said schedule and in such resolution named ought to be deemed a poison within the meaning of this Act; and thereupon the said College shall submit the said resolution for the approval of Her Majesty's Privy Council in Ireland, and if such approval shall be given, then such resolution and approval shall be advertised in the "Dublin Gazette;" and on the expiration of one month from such advertisement the article named in such resolution shall be deemed to be a poison within the meaning of this Act.

2. It shall be unlawful to sell any poison, either by wholesale or by retail, unless the box, bottle, vessel, wrapper, or cover in which such poison is contained be distinctly labelled with the name of the article, and the word "poison," and with

the name and address of the seller of the poison ; and it shall be unlawful to sell any of the poisons which are named in the first part of Schedule A. to this Act annexed, or which may hereafter be added thereto under section one of this Act, to any person unknown to the seller, unless such person is introduced by some person known to the seller ; and on every sale of any such article the seller shall, before delivery, make or cause to be made an entry in a book to be kept for that purpose, stating, in the form set forth in the Schedule B. to this Act annexed, the date of the sale, the name and address of the purchaser, the name and quantity of the article sold, and the purpose for which it is stated by the purchaser to be required, to which entry the signature of the purchaser and of the person (if any) who introduced him shall be affixed ; and any person selling poison otherwise than is herein provided shall be liable to a penalty not exceeding five pounds for the first offence, and to a penalty not exceeding ten pounds for the second or any subsequent offence ; and for the purposes of this section the person on whose behalf any sale is made by any apprentice or servant shall be deemed to be the seller ; but the provisions of this section which are solely applicable to poisons in the first part of the Schedule A. to this Act annexed, or which require that the label shall contain the name and address of the seller, shall not apply to articles to be exported from Ireland by wholesale dealers, nor to sales by wholesale to retail dealers in the ordinary course of wholesale dealing, nor shall any of the provisions of this section apply to any medicine supplied by a duly qualified apothecary, nor apply to any article when forming

part of the ingredients of any medicine dispensed by a duly qualified apothecary, provided such medicine be labelled in the manner aforesaid with the name and address of the seller, and the ingredients thereof be entered with the name of the person to whom it is sold or delivered in a book to be kept by the seller for that purpose ; and nothing in this Act contained shall repeal or affect any of the provisions of the Act of the fourteenth and fifteenth years of the reign of Her present Majesty, intituled " An Act to regulate the Sale of Arsenic."

3. The provisions of the Act of the twenty-third and twenty-fourth years of the reign of Her present Majesty, intituled " An Act for preventing the Adulteration of Articles of Food or Drink," shall extend to all articles usually taken or sold as medicines, and every adulteration of any such article shall be deemed an admixture injurious to health.

4. Every penalty recoverable under the provisions of this Act shall be recoverable in a summary way, with respect to the police district of Dublin metropolis subject and according to the provisions of any Act regulating the powers and duties of justices of the peace for such district or of the police of such district, and with respect to other parts of Ireland before a justice or justices of the peace sitting in petty sessions, subject and according to the provisions of the Petty Sessions (Ireland) Act, 1851, and any Act amending the same, and shall be applied according to the provisions of the Fines Act (Ireland), 1851, or any Act amending the same.

---

#### SCHEDULE A.

##### PART I.

Arsenic, and its preparations.  
 Prussic acid.  
 Cyanides of potassium and all metallic cyanides.  
 Strychnine, and all poisonous vegetable alkaloids and their salts.  
 Aconite, and its preparations.

Emetic tartar.  
 Corrosive sublimate.  
 Cantharides.  
 Savin, and its oil.  
 Ergot of rye, and its preparations.

##### PART II.

Oxalic acid.  
 Chloroform.  
 Belladonna, and its preparations.  
 Essential oil of almonds, unless deprived of its prussic acid.  
 Opium, and all preparations of opium or of poppies.  
 Preparations of corrosive sublimate.  
 Preparations of morphine.

Red oxide of mercury (commonly known as red precipitate of mercury).  
 Ammoniated mercury (commonly known as white precipitate of mercury).  
 Every compound containing any of the poisons mentioned in this schedule, when prepared or sold for the destruction of vermin.  
 The tincture and all vesicating liquid preparations of cantharides.

## SCHEDULE B.

Date.	Name of Purchaser.	Name and Quantity of Poison sold.	Purpose for which it is required.	Signature of Purchaser.	Signature of Person introducing Purchaser.

## CHAP. 27.

*The Protection of Inventions Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Exhibition of new inventions not to prejudice patent rights.*
3. *Exhibition of designs not to prejudice right to registration.*
4. *Application of Act to international exhibitions in general.*

**An Act for the Protection of Inventions  
exhibited at International Exhibitions  
in the United Kingdom.**

(14th July 1870.)

WHEREAS it is expedient that such protection as is herein-after mentioned should be afforded to persons desirous of exhibiting new inventions at exhibitions to be held in the United Kingdom :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows ; (that is to say,)

1. This Act may be cited as "The Protection of Inventions Act, 1870."

2. The exhibition of any new invention at any international exhibition shall not, nor shall the publication during the period of the holding of such exhibition of any description of such invention, nor shall the user of such invention for the purposes of such exhibition, and within the place where the same may be held, nor shall the user of such invention elsewhere by any person without the privity and consent of the true and first inventor thereof, prejudice the right of the exhibitor thereof, he being the true and first inventor,

within six months from the time of the opening of such exhibition, to leave at the office of the Commissioners of Patents a petition for the grant of letters patent for such invention and the declaration accompanying the same, and a provisional specification or a complete specification thereof, under The Patent Law Amendment Act, 1852, and the Acts amending the same, or to obtain provisional protection or letters patent for such invention in pursuance of those Acts, nor invalidate any letters patent which may be granted for such invention upon any such petition as aforesaid.

3. The exhibition at any international exhibition of any new design capable of being registered provisionally under "The Designs Act, 1850," or of any article to which such design is applied, shall not, nor shall the publication during the period of the holding of such exhibition of any description of such design, prejudice the right of any person to register, provisionally or otherwise, such design, or invalidate any provisional or other registration which may be granted for such design.

4. The term "international exhibition" shall mean in this Act the Workmen's International Exhibition to be held in the year one thousand

eight hundred and seventy; also any of the annual international exhibitions of select works of fine and industrial art and scientific inventions to be held in the year one thousand eight hundred and seventy-one and succeeding years, under the direction of Her Majesty's Commissioners for the Exhibition of one thousand eight

hundred and fifty-one; also any international exhibition which the Board of Trade may, upon the application of any persons desirous of holding such exhibition, certify to be in their judgment calculated to promote British art or industry, and to prove beneficial to the mercantile or industrious classes of Her Majesty's subjects.

---

CHAP. 28.

*The Attorneys' and Solicitors' Act, 1870.*

---

ABSTRACT OF THE ENACTMENTS.

*Preliminary.*

1. *Short title.*
2. *Extent of Act.*
3. *Interpretation of terms.*

PART I.—*Agreements between Attorneys or Solicitors and their Clients.*

4. *The remuneration of attorneys and solicitors may be fixed by agreement. Amount payable under agreement not to be paid until allowed by taxing officer.*
5. *Saving of interests of third parties.*
6. *Agreements shall exclude further claims.*
7. *Reservation of responsibility for negligence.*
8. *Examination and enforcement of agreements.*
9. *Improper agreements may be set aside.*
10. *Agreements may be re-opened after payment in special cases.*
11. *Prohibition of certain stipulations.*
12. *Not to give validity to contracts, &c. which may be void in bankruptcy.*
13. *Provision in case of death or incapacity of the attorney.*
14. *As to change of attorney after agreement.*
15. *Agreements shall be exempt from taxation.*

---

PART II.—*General Provisions.*

16. *Security may be taken for future costs.*
17. *Interest may be allowed on taxations in respect of disbursements and advances.*
18. *Taxing officer to have regard to character of services.*
19. *Revival of order for payment of costs.*
20. *Power to attorneys, &c. to perform acts as appertain to office of proctor.*

An Act to amend the Law relating to the Remuneration of Attorneys and Solicitors. (14th July 1870.)

WHEREAS it is expedient to amend the law relating to the remuneration of attorneys and solicitors:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

*Preliminary.*

1. This Act may be cited as "The Attorneys' and Solicitors' Act, 1870."

2. This Act shall not extend to Scotland.

3. In the construction of this Act, unless where the context otherwise requires, the words following have the significations herein-after respectively assigned to them; that is to say,

The words "attorney or solicitor" mean an attorney, solicitor, or proctor qualified according to the provisions of the Acts for the time being in force relating to the admission and qualification of attorneys, solicitors, or proctors:

"Person" includes a corporation:

"Client" includes any person who, as a principal or on behalf of another person, retains or employs, or is about to retain or employ,

an attorney or solicitor, and any person who is or may be liable to pay the bill of an attorney or solicitor for any services, fees, costs, charges, or disbursements.

**PART I.—Agreements between Attorneys or Solicitors and their Clients.**

4. An attorney or solicitor may make an agreement in writing with his client respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges, or disbursements in respect of business done or to be done by such attorney or solicitor, whether as an attorney or solicitor or as an advocate or conveyancer, either by a gross sum, or by commission or per-centage, or by salary or otherwise, and either at the same or at a greater or at a less rate as or than the rate at which he would otherwise be entitled to be remunerated, subject to the provisions and conditions in this part of this Act contained: Provided always, that when any such agreement shall be made in respect of business done or to be done in any action at law or suit in equity, the amount payable under the agreement shall not be received by the attorney or solicitor until the agreement has been examined and allowed by a taxing officer of a court having power to enforce the agreement; and if it shall appear to such taxing officer that the agreement is not fair and reasonable he may require the opinion of a court or a judge to be taken thereon by motion or petition, and such court or judge shall have power either to reduce the amount payable under the agreement or to order the agreement to be cancelled and the costs, fees, charges, and disbursements in respect of the business done to be taxed in the same manner as if no such agreement had been made.

5. Such an agreement shall not affect the amount of, or any rights or remedies for the recovery of, any costs recoverable from the client by any other person, or payable to the client by any other person, and any such other person may require any costs payable or recoverable by him to or from the client to be taxed according to the rules for the time being in force for the taxation of such costs, unless such person has otherwise agreed: Provided always, that the client who has entered into such agreement shall not be entitled to recover from any other person under any order for the payment of any costs which are the subject of such agreement more than the amount payable by the client to his own attorney or solicitor under the same.

6. Such an agreement shall be deemed to exclude any further claim of the attorney or solicitor beyond the terms of the agreement in respect of any services, fees, charges, or disbursements in relation to the conduct and completion

of the business in reference to which the agreement is made, except such services, fees, charges, or disbursements, if any, as are expressly excepted by the agreement.

7. A provision in any such agreement that the attorney or solicitor shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as such attorney or solicitor, shall be wholly void.

8. No action or suit shall be brought or instituted upon any such agreement; but every question respecting the validity or effect of any such agreement may be examined and determined, and the agreement may be enforced or set aside, without suit or action, on motion or petition of any person, or the representative of any person, a party to such agreement, or being or alleged to be liable to pay, or being or claiming to be entitled to be paid, the costs, fees, charges, or disbursements in respect of which the agreement is made, by the court in which the business, or any part thereof, was done, or a judge thereof, or if the business was not done in any court, then, where the amount payable under the agreement exceeds fifty pounds, by any superior court of law or equity or a judge thereof, and where such amount does not exceed fifty pounds, by the judge of a county court which would have jurisdiction in an action upon the agreement.

9. Upon any such motion or petition as aforesaid, if it shall appear to the court or judge that such agreement is in all respects fair and reasonable between the parties, the same may be enforced by such court or judge by rule or order in such manner and subject to such conditions, if any, as to the costs of such motion or petition as such court or judge may think fit; but if the terms of such agreement shall not be deemed by the court or judge to be fair and reasonable, the same may be declared void, and the court or judge shall thereupon have power to order such agreement to be given up to be cancelled, and may direct the costs, fees, charges, and disbursements incurred or chargeable in respect of the matters included therein to be taxed in the same manner and according to the same rules as if such agreement had not been made; and the court or judge may also make such order as to the costs of and relating to such motion or petition, and the proceedings thereon, as to the said court or judge may seem fit.

10. When the amount agreed for under any such agreement has been paid by or on behalf of the client, or by any person chargeable with or entitled to pay the same, any court or judge having jurisdiction to examine and enforce such

an agreement may, upon application by the person who has paid such amount, within twelve months after the payment thereof, if it appears to such court or judge that the special circumstances of the case require the agreement to be re-opened, re-open the same, and order the costs, fees, charges, and disbursements to be taxed, and the whole or any portion of the amount received by the attorney or solicitor to be repaid by him, on such terms and conditions as to the court or judge may seem just.

Where any such agreement is made by the client in the capacity of guardian, or of trustee under a deed or will, or of committee of any person or persons whose estate or property will be chargeable with the amount payable under such agreement, or with any part of such amount, the agreement shall before payment be laid before the taxing officer of a court having jurisdiction to enforce the agreement, and such officer shall examine the same, and may disallow any part thereof, or may require the direction of the court or a judge to be taken thereon by motion or petition; and if in any such case the client pay the whole or any part of the amount payable under the agreement, without the previous allowance of such officer or court or judge as aforesaid, he shall be liable at any time to account to the person whose estate or property is charged with the amount paid, or with any part thereof, for the amount so charged; and if in any such case the attorney or solicitor accept payment without such allowance, any court which would have had jurisdiction to enforce the agreement may, if it think fit, order him to refund the amount so received by him under the agreement.

11. Nothing in this Act contained shall be construed to give validity to any purchase by an attorney or solicitor of the interest, or any part of the interest, of his client, in any suit, action, or other contentious proceeding to be brought or maintained, or to give validity to any agreement by which an attorney or solicitor retained or employed to prosecute any suit or action stipulates for payment only in the event of success in such suit, action, or proceeding.

12. Nothing in this Act contained shall give validity to any disposition, contract, settlement, conveyance, delivery, dealing, or transfer, which may be void or invalid against a trustee or creditor in bankruptcy, arrangement, or composition, under the provisions of the laws relating to bankruptcy.

13. Where an attorney or solicitor has made an agreement with his client in pursuance of the provisions of this Act, and anything has been done by such attorney or solicitor under the agreement, and before the agreement has been

completely performed by him, such attorney or solicitor dies or becomes incapable to act, an application may be made to any court which would have jurisdiction to examine and enforce the agreement by any party thereto, or by the representatives of any such party, and such court shall thereupon have the same power to enforce or set aside such agreement, so far as the same may have been acted upon, as if such death or incapacity had not happened; and such court, if it shall deem the agreement to be in all respects fair and reasonable, may order the amount due in respect of the past performance of the agreement to be ascertained by taxation, and the taxing officer in ascertaining such amount shall have regard so far as may be to the terms of the agreement, and payment of the amount found to be due may be enforced in the same manner as if the agreement had been completely performed by the attorney or solicitor.

14. If, after any such agreement as aforesaid shall have been made, the client shall change his attorney or solicitor before the conclusion of the business to which such agreement shall relate (which he shall be at liberty to do notwithstanding such agreement), the attorney or solicitor, party to such agreement, shall be deemed to have become incapable to act under the same within the meaning of section thirteen of this Act; and upon any order being made for taxation of the amount due to such attorney or solicitor in respect of the past performance of such agreement, the court shall direct the taxing master to have regard to the circumstance under which such change of attorney or solicitor has taken place; and, upon such taxation, the attorney or solicitor shall not be deemed entitled to the full amount of the remuneration agreed to be paid to him unless it shall appear that there has been no default, negligence, improper delay, or other conduct on his part affording reasonable ground to the client for such change of attorney or solicitor.

15. Except as in this part of this Act provided, the bill of an attorney or solicitor for the amount due under an agreement made in pursuance of the provisions of this Act shall not be subject to any taxation, nor to the provisions of the Act of the sixth and seventh Victoria, chapter seventy-three, and the Acts amending the same, respecting the signing and delivery of the bill of an attorney or solicitor.

#### PART II.—General Provisions.

16. An attorney or solicitor may take security from his client for his future fees, charges, and disbursements, to be ascertained by taxation or otherwise.

17. Subject to any general rules or orders hereafter to be made, upon every taxation of costs, fees, charges, or disbursements the taxing officer may allow interest at such rate and from such time as he thinks just on moneys disbursed by the attorney or solicitor for his client, and on moneys of the client in the hands of the attorney or solicitor, and improperly retained by him.

18. Upon any taxation of costs, the taxing officer may, in determining the remuneration, if any, to be allowed to the attorney or solicitor for his services, have regard, subject to any general rules or orders hereafter to be made, to the skill, labour, and responsibility involved.

19. Whenever any decree or order shall have been made for payment of costs in any suit, and

such suit shall afterwards become abated, it shall be lawful for any person interested under such decree or order to revive such suit, and thereupon to prosecute and enforce such decree or order, and so on from time to time as often as any such abatement shall happen.

20. From and after the passing of this Act, it shall be lawful for an attorney or solicitor to perform all such acts as appertain solely to the office of a proctor, in any Ecclesiastical Court other than the Provincial Courts of the Archbishops of Canterbury and of York, and the Diocesan Court of the Bishop of London, without incurring any forfeiture or penalty, and to make the same charges which a proctor would be entitled to make, and to recover the same, any enactment or enactments to the contrary notwithstanding.

#### CHAP. 29.

#### *The Wine and Beerhouse Act Amendment Act, 1870.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Extent of Act.*
3. *Interpretation of terms.*
4. *Amendment of provisions of principal Act as to grants, durations, and transmissions of certificates.*
5. *Provision as to convictions against the principal Act and this Act.*
6. *Provision as to certain offences.*
7. *Provision as to existing licences.*
8. *Regulation as to closing of houses, &c.*
9. *Avoidance of licences upon refusal to renew certificate.*
10. *As to beer dealer's additional retail licence.*
11. *Power to justices to postpone applications for renewals.*
12. *Limit of mitigation of penalties.*
13. *Houses licensed to retail sweets.*
14. *Persons convicted of felony disqualified from selling spirits by retail.*
15. *Visitation of suspected houses.*
16. *Sect. 6. of 5 G. 4. c. 54., sect. 2. of 6 G. 4. c. 81., and sect. 6. of 13 & 14 Vict. c. 67., so far as relates to brewers' retail licences, repealed.*
17. *Duration of the principal Act and of this Act.*

#### An Act to amend and continue "The Wine and Beerhouse Act, 1869."

(14th July 1870.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as "The Wine and Beerhouse Act Amendment Act, 1870."

2. This Act shall not extend to Scotland or Ireland.

3. In this Act the words "the principal Act" mean the Wine and Beerhouse Act, 1869, and the word "sweets" includes sweets, made wines, mead, and metheglin.

4. The provisions of the principal Act with reference to the grant, duration, and transmission of certificates shall be amended as follows; (that is to say,)

- (1.) The seventh section of the principal Act shall be read as if for the words "constable or peace officer acting within such parish, township, or place," there were substituted the words "the superintendent

of police of the district," and the notice required by that section to be given to any overseer or constable may be served by a registered letter through the post:

- (2.) Where a certificate is now required to be signed by a majority of justices, it shall be sufficient if, instead of such signature, the concurrence of such majority be signified by means of an impression from an official seal or stamp, in such form as the justices may direct, affixed in the presence of the justices in sessions assembled, and verified in the case of each certificate by the signature of their clerk. Any seal purporting to be so affixed and verified shall be received in evidence without further proof; and if any unauthorised person imitate or affix an impression of such seal on any certificate or imitation of a certificate, or knowingly use a certificate or imitation of a certificate falsely purporting to be sealed in pursuance of this section, he shall be guilty of forgery:
- (3.) For every certificate granted by way of renewal under the principal Act or this Act, there shall be payable to the clerk of the justices the sum of four shillings for all matters to be done by such clerk, and one shilling for the constable or officer for service of notices; and if any clerk of justices demand or receive any greater or further fee or payment in respect of any such renewal, whether for himself or for any other officer or person, he shall, upon summary conviction, be liable to a penalty of five pounds:
- (4.) It shall be in the discretion of the justices to whom an application for a transfer is made, either to allow or refuse the application, or to adjourn the consideration thereof:
- (5.) The proviso of the fifth section of the principal Act and the ninth section of the principal Act shall be repealed, and, subject to the provisions of this section, all the provisions of the Act of the ninth year of George the Fourth, chapter sixty-one, and Acts amending the same, relating to the time for which justices licences are to be in force, and relating to the fees payable for such licences, and relating to the transfer, removal, and transmission of such licences, and the grant of licences upon assignment, death, change of occupancy, or other contingency, and relating to copies of such licences, and relating to grants or transfers of such licences without the attendance of an applicant who is hindered by sickness, infirmity, or other reasonable cause, shall have effect with regard to cer-

tificates granted or to be granted under the principal Act and this Act.

5. The provisions of the seventeenth and nineteenth sections of the principal Act as to convictions shall extend to convictions for offences against the principal Act or this Act: Provided always, that the period of three years shall be substituted for the period of five years named in clause seventeen of the said Act.

6. Where by the principal Act, or any other Act or Acts, a person licensed to retail beer, cider, or wine, not to be consumed on the premises, is subject to any penalty or forfeiture for taking, or for authorising or suffering to be taken, any beer, cider, or wine out of such premises for the purpose of being for his benefit or profit drunk or consumed on or in other premises or places with intent to evade the provisions of any Act, or the conditions of his licence, he shall be subject to the like penalties and forfeitures for taking, or authorising or suffering to be taken, any beer, cider, or wine out of his premises for the purpose of being for his benefit or profit drunk or consumed on or in any place, whether enclosed or not, and whether or not a public thoroughfare, with intent to evade the provisions of any such Act or the conditions of his licence.

The fifteenth section of the principal Act shall be read as if after the word "house" there were inserted the words "by any person other than a servant or inmate of such house."

The sixteenth section of the principal Act shall be read as if for the words "convicted of keeping his house open," there were substituted the words "convicted of opening or of keeping open his house."

Any constable or officer of police who finds any person present in a house licensed for the sale of any exciseable or distilled or fermented liquor at a time when such house is by law required to be closed, may demand the name and address of such person; and if any such person when so required refuse to give his name and address, or give a false name or address, he shall be liable on summary conviction to a penalty not exceeding forty shillings; and any person who when so required refuses or neglects to give his name or address may be apprehended by such constable or officer, and detained until he can be carried before a justice of the peace.

7. The nineteenth section of the principal Act shall extend to licences granted by way of renewal from time to time of licences in force on the first day of May one thousand eight hundred and sixty-nine, whether such licences continue to be held by the same person or have been or may be transferred to any other person or persons.



The second and third provisoes of the said nineteenth section of the principal Act shall be read as if production of the certificate and record of convictions on the certificate were therein referred to instead of production of the licence and record of convictions on the licence, and as if for the expressions "two justices" and "justices" respectively, there were substituted the words "justice or justices."

Where a conviction is recorded on a certificate, in pursuance of the principal Act as amended by this Act, the clerk to the convicting justices shall also make and keep a record of such conviction, and of the fact that it has been recorded on the certificate.

Where a conviction of any person has, before the passing of this Act, been recorded on a licence in pursuance of the principal Act, or on a certificate in pursuance of this Act, the justices to whom such person applies for a renewal of his certificate shall cause such conviction to be recorded on the renewed certificate.

Any record of a conviction upon a licence or certificate, and also any copy of a record of a conviction made or kept by a clerk to the convicting justices, if such copy purport to be signed by the clerk by whom the record was made or is kept, shall for all purposes be sufficient evidence of such conviction, and of the fact that it was recorded on the licence or certificate.

8. Where any person is required by law to close any house or place for the sale or consumption in any manner of any exciseable, distilled, or fermented liquor during any days or times, subject in case of default to any penalties, he shall, subject in case of default to the like penalties, close such house or place during the same days or times for the sale or consumption of all other liquors, and of all articles whatsoever, notwithstanding any Act, law, licence, or certificate under authority whereof he might otherwise keep open such house or place for the sale or consumption of any such other liquor or article.

9. Where renewal of any certificate granted under the principal Act is refused, any licence held under authority thereof shall, if the person aggrieved do not give notice of appeal with the requisite security in that behalf within the time limited for such notice, or if such notice having been given the appeal be not prosecuted or be dismissed, become void to all intents from the time of such failure to give notice of or to prosecute the appeal or of such dismissal, as the case may be: Provided that where the excise licence shall expire before the appeal has been heard and determined, the appellant shall be permitted to carry on and exercise the trade or business on such terms as the Commissioners of Inland Revenue shall direct until the appeal shall have

been heard and determined or withdrawn, and no longer.

10. A certificate for an additional licence to the holder of a strong beer dealer's licence to retail beer under the provisions of the twenty-sixth and twenty-seventh of Her Majesty, chapter thirty-three, shall not after the passing of this Act, except by way of renewal from time to time of a certificate in force at the time of the passing of this Act, be granted unless upon the like proof of qualification according to rating as is required in the case of licences to retail beer for consumption on the premises under the provisions of the Acts recited in the principal Act for permitting the general sale of beer and cider by retail in England.

11. Where any applicant for the grant or renewal of a certificate has, through inadvertence or misadventure, failed to comply with any of the preliminary requirements of the principal Act or this Act, or any Act incorporated therewith, the justices may, if they shall so think fit, and upon such terms as they think proper, postpone the consideration of the application to an adjourned meeting, and if at such adjourned meeting the justices shall be satisfied that such terms have been complied with, they may proceed to grant or withhold such certificate as if the preliminary requirements of the principal Act had been complied with.

12. Where any person holding a certificate under the principal Act is convicted of any offence against the said Act or this Act, or against any of the Acts recited or mentioned in the principal Act, or against the tenor or conditions of any licence held by him under a certificate granted in pursuance of the principal Act, it shall not be lawful for the justices before whom he is convicted to mitigate or reduce the penalty for such offence to a less sum than twenty shillings: Provided that nothing herein contained shall extend to authorise the mitigation or reduction of any penalty, whether of excise or police, to a less sum than the minimum to which the same may, under the provisions of any other Acts, be mitigated or reduced.

13. All the provisions of the Act of the eighteenth and nineteenth of Her Majesty, chapter one hundred and eighteen, for authorising the entry by constables into houses or places of public resort for the sale of fermented or distilled liquors, shall extend to authorise such entry on all days and at any time into any house or place in which any person sells exciseable liquors or sweets by retail under any licence in that behalf, whether the same are sold for consumption on the premises or otherwise.

14. Every person convicted of felony shall for ever be disqualified from selling spirits by retail, and no licence to sell spirits by retail shall be granted to any person who shall have been so convicted as aforesaid; and if any person shall, after having been so convicted as aforesaid, take out or have any licence to sell spirits by retail, the same shall be void to all intents and purposes; and every person who, after being so convicted as aforesaid, shall sell any spirits by retail in any manner whatever, shall incur the penalty for doing so without a licence.

15. Where an information on oath is made before any justice of the peace that there is reasonable ground for believing that any fermented, distilled, or exciseable liquors or sweets are being unlawfully sold or kept for sale at any premises or place for the retail whereat of fermented, distilled, or exciseable liquors or sweets no licence is in force, such justice may in his discretion grant a warrant under his hand to any superintendent, inspector, sergeant, or other officer or officers of police, by virtue whereof it shall be lawful for the officer or officers named in the warrant at any time or times within one month from the date thereof to enter, and if need be by force, the premises or place named in the warrant, and every part thereof, and to search for and seize any fermented, distilled, or exciseable liquors or sweets there found which there is reasonable ground to suppose are in such premises or place for the purpose of unlawful sale at such or any other premises or place; and if any person, by himself or by any other person acting by or with his direction, permission, or consent, refuse or neglect to admit to any part

of any such premises or place any officer or person demanding admittance in pursuance of the provisions of this section, he shall be liable upon summary conviction to a penalty not exceeding twenty pounds.

Any liquor seized in pursuance of the provisions of this section shall be sold in such manner as two justices in petty sessions may direct, and the proceeds shall be applied in the same manner as penalties summarily imposed by the same justices for sale without a licence might be applied.

16. From the passing of this Act, so much of the Acts of the fifth of George the Fourth, chapter fifty-four, sixth George the Fourth, chapter eighty-one, and thirteenth and fourteenth of Her Majesty, chapter sixty-seven, as authorises the grant to brewers of beer of brewers licences to retail beer not to be consumed on the premises where sold, shall be repealed, and no such licence shall be granted after the passing of this Act, whether to a new applicant or by way of renewal: Provided that a person who at the passing of this Act holds any such licence shall continue to be subject to all the like regulations and conditions so long as such licence remains in force, and shall be subject to the like penalties for breach of any such regulations and conditions committed while such licence remains in force as if this Act had not been passed.

17. The principal Act shall be continued and be in force and this Act shall be in force for two years from the date of the passing of this Act, and until the end of the then next session of Parliament.

## CHAP. 30.

### *The Wages Attachment Abolition Act, 1870.*

#### ABSTRACT OF THE ENACTMENTS.

1. *No order of attachment of wages after passing of Act.*
2. *Short title.*

### An Act to abolish Attachment of Wages. (14th July 1870.)

WHEREAS by an Order in Council made on the eighteenth day of November one thousand eight hundred and sixty-seven, certain of the provisions of "The Common Law Procedure Act, 1854," were extended and applied to all the Courts of Record established under the provisions of "The County Courts Act, 1846," and also to

the City of London Courts of Record as constituted by "The County Courts Act, 1867:"

And whereas much inconvenience has arisen by the attachment of wages to satisfy judgments recovered in some of such first-mentioned Courts, and it is expedient to prevent the attachment of wages to satisfy judgments recovered in any Court of Record or inferior Court:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of

the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

1. That after the passing of this Act no order for the attachment of the wages of any servant,

labourer, or workman shall be made by the judge of any Court of Record or inferior Court.

2. That this Act may be cited as "The Wages Attachment Abolition Act, 1870."

### CHAP. 31.

#### *Consolidated Fund (£9,000,000).*

#### ABSTRACT OF THE ENACTMENTS.

1. *There may be applied for the service of the year ending 31st March 1871 the sum of 9,000,000*l.* out of the Consolidated Fund.*
2. *Treasury may borrow 9,000,000*l.* on the credit of this Act.*
3. *Interest on moneys borrowed.*

An Act to apply the sum of nine million pounds out of the Consolidated Fund to the service of the year ending the thirty-first day of March one thousand eight hundred and seventy-one.

(1st August 1870.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. There may be issued and applied, for or towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and seventy-one, the sum of nine million pounds out of the Consolidated Fund of the

United Kingdom of Great Britain and Ireland, and the Commissioners of Her Majesty's Treasury for the time being are hereby authorised and empowered to issue and apply the same accordingly.

2. The Commissioners of the Treasury may borrow upon the credit of the sum granted by this Act out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland an amount not exceeding in the whole the sum of nine million pounds, and such amount may be borrowed by the said Commissioners from time to time in such sums as may be required for the public service, and shall be placed to the credit of the account of Her Majesty's Exchequer at the Bank of England, and be available to satisfy any orders for credits granted or to be granted on the said account, under the provisions of the "Exchequer and Audit Departments Act, 1866."

3. The sums borrowed from time to time under the authority of this Act shall bear interest not exceeding the rate of five pounds per centum per annum, and the principal and interest of all such sums shall be paid out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said sums shall have been borrowed.

## CHAP. 32.

*The Customs and Inland Revenue Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*

## PART I.

## AS TO CUSTOMS.

2. *Grant of duties of customs in schedule (A.)*

## PART II.

## AS TO EXCISE.

*Repeal and Modification of certain Duties.*

3. *Repeal of certain duties of excise, viz. : Licenses to foot hawkers in Great Britain. Licenses to foot hawkers in Ireland. Licenses to paper makers : Licenses to soap makers : Licenses to still makers in Scotland and Ireland. Licenses to vendors of playing cards.*
4. *Plate license not necessary for the sale of watch cases by the maker.*
5. *Auctioneers license not necessary for the sale of fish upon the sea-shore.*

*Germinating Grain for Animals.*

6. *Farmers may steep and germinate grain to be consumed by animals. Penalty for infringing the provisions of this section.*

*Grant of Duties.*

7. *Grant of duties of excise in schedule (B.)*

*Sugar used in brewing.*

8. *Provisions to be observed in relation to the use of sugar in brewing.*
9. *A penalty of double duty to be paid upon any deficiency exceeding 2 per cent. found on taking the stock of sugar at a brewery.*
10. *Brewer to enter the quantity of malt and sugar intended to be used in brewing two hours before mashing and dissolving the same.*

*Horses kept for Husbandry.*

11. *Horses kept for husbandry.*

## PART III.

## AS TO STAMP DUTIES.

12. *Duties on newspapers to cease.*
13. *Reduction of duty on certain policies of insurance.*

## PART IV.

## AS TO INCOME TAX.

14. *Grant of duties of income tax specified in schedule.*
15. *Repeal of provisions contained in 32 & 33 Vict. c. 14. ss. 6, and 7.*

## PART V.

## AS TO DUTIES ON INHABITED HOUSES.

16. *Poundage to be divided between assessors and collectors. Schedules.*

An Act to grant certain Duties of Customs and Inland Revenue, and to repeal and alter other Duties of Customs and Inland Revenue.

(1st August 1870.)

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as "The Customs and Inland Revenue Act, 1870."

## PART I.

### AS TO CUSTOMS.

2. There shall be charged, collected, and paid, for the use of Her Majesty, her heirs and successors, the duties of customs specified in schedule (A.) to this Act, and there shall be allowed the several drawbacks specified in the said schedule; and all the provisions contained in any Act relating to customs duties, and drawbacks, and in force at the time of the passing of this Act, shall, so far as the same are applicable, have full force and effect with respect to the said duties and drawbacks of customs granted and allowed by this Act.

## PART II.

### AS TO EXCISE.

#### *Repeal and Modification of certain Duties.*

3. The duties of excise specified in this section shall cease to be payable on the several days herein-after mentioned; that is to say,

On the first day of October one thousand eight hundred and seventy,—

The duty of two pounds upon the license to be taken out by every hawker, pedlar, petty chapman, and other trading person who shall travel and trade on foot in Great Britain without any horse or other beast bearing or drawing burthen, and shall carry his goods,

wares, or merchandise to and sell or expose for sale the same at other men's houses only, and not in or at any house, shop, room, booth, stall, or other place whatever belonging to or hired or occupied or used by him for that purpose in any town to which he may travel:

The duty of two pounds and two shillings upon a license to a person exercising the trade or calling of a hawker, pedlar, petty chapman, or other trading person going from place to place in Ireland, carrying to sell or exposing, to sale any goods, wares, or merchandise, and travelling on foot with or without a servant or other person, employed in carrying goods of any such hawker, pedlar, or petty chapman, but without a horse or other beast of burthen.

On the sixth day of July one thousand eight hundred and seventy,—

The duty upon a license to a maker of paper, pasteboard, or scaleboard;

The duty upon a license to a maker of soap for sale;

The duty upon a license to a maker of stills in Scotland and Ireland.

On the second day of September one thousand eight hundred and seventy,—

The duty of two shillings and sixpence upon a license to be taken out by any person who shall sell playing cards, not being a maker thereof;

but the enactments relating to the said duties respectively shall remain in full force and effect as to any duties which shall be owing or in arrear on the said days respectively, and also as to any offences which shall have been committed against any of the said enactments previous to the said days respectively.

4. On and after the sixth day of July one thousand eight hundred and seventy, it shall not be necessary for any person to take out a license as a dealer in plate, in order to enable him to sell watch cases which shall have been made by him.

5. From and after the passing of this Act, it shall not be necessary for any person to take out an excise license as an auctioneer, in order to enable him to sell fish by auction upon the seashore where the same shall have been first landed.

#### *Germinating Grain for Animals.*

6. It shall be lawful for any farmer in Great Britain to germinate grain to be consumed by animals under the following conditions; that is to say,—

1. He shall deliver to the officer of excise of the district a notice in writing describing

the particular building or place, or buildings or places, in which he intends to steep and germinate and in which he intends to keep the grain when steeped and germinated :

2. Every such building or place shall be situate on the farm upon which the grain is to be consumed, and at a distance of a quarter of a mile at least from any malthouse, and from any kiln upon which malt or grain could be dried, or, if not so situated, shall be otherwise situate to the satisfaction of the Commissioners of Inland Revenue :
3. Every such building or place shall at all times be open to the inspection of any officer of excise :
4. The grain, after being steeped or germinated, shall not be dried or ground or crushed in any manner whatsoever :
5. The grain shall be wholly consumed by animals on the farm upon which it shall have been steeped and germinated.

If any person shall germinate any grain, or shall keep or have in his custody or possession any germinated grain, otherwise than as allowed by this section, or shall prevent or hinder any officer of excise from inspecting any building or place used or entered by him for the purpose of steeping and germinating grain, or used or entered by him for the purpose of keeping grain when steeped and germinated; or shall dry, grind, or crush, or permit or suffer to be dried, ground, or crushed, any steeped or germinated grain, contrary to the provisions of this section; or shall use or consume, or permit or suffer to be used or consumed, any steeped and germinated grain, otherwise than as directed by this section, he shall forfeit all such grain and the penalty of one hundred pounds; and every person who shall be convicted of any of the offences aforesaid shall be incapable after such conviction of steeping and germinating grain under the provisions of this section.

#### *Grant of Duties.*

7. There shall be charged, collected, and paid, for the use of Her Majesty, her heirs and successors, the duties of excise specified in schedule (B.) to this Act; and all the provisions contained in any Act relating to excise duties, and in force at the time of the passing of this Act, shall, so far as the same are applicable, have full force and effect with respect to the said duties of excise granted by this Act.

#### *Sugar used in brewing.*

8. In addition to any enactments now in force in relation to sugar to be used by brewers of beer for sale in the brewing and making of beer, the following provisions shall have effect in relation to sugar so to be used :—

1. The brewer shall on the first day of October one thousand eight hundred and seventy enter in a book or paper to be provided by the Commissioners of Inland Revenue an account in pounds weight avoirdupois of the quantity of sugar then in his possession, and from time to time a like account of every quantity of sugar subsequently received by him, and he shall make such entry on the day on which he shall receive the sugar :
2. The brewer shall keep the said book or paper at all times in some public and open part of his entered premises ready for the inspection of the officers of excise, and he shall permit any officer of excise at any time to inspect the said book or paper, and to make any entry therein or extract therefrom, and also to take away the said book or paper, upon leaving another for the use of the brewer :
3. The brewer shall not receive any sugar except in a package containing two hundredweight of sugar at the least, unless the sugar shall be contained in the package in which it shall have been imported into the United Kingdom, and shall be in the same state as when imported :
4. The brewer shall not receive any sugar unless accompanied by an invoice or delivery note specifying the quantity and the true name and address of the person from whom the sugar shall have been purchased :
5. The brewer shall produce and deliver to the officer of excise who shall first survey or visit his brewery after the receipt of any sugar, the invoice or delivery note which shall have accompanied such sugar, and he shall allow the officer to retain the said invoice or delivery note so long as may be necessary to enable him to compare the same with the book or paper in which the account of the sugar is required to be entered :
6. The brewer shall deposit all sugar received by him, immediately upon the receipt thereof, in the proper place entered by him for keeping or storing sugar, and shall keep the same therein, separate and apart from all other sugar, for the period of twenty-four hours from the time when such sugar shall have been so deposited, unless such sugar shall have been previously examined by an officer of excise :
7. The brewer shall permit any officer of excise at any time to take an account of the sugar in his possession, or any part thereof, and shall furnish the officer taking such account with proper scales and weights, and with such assistance as may be neces-

sary to enable him conveniently to take such account:

8. The brewer shall not remove any sugar from his brewery, nor dispose thereof in any manner other than by dissolving the same in the mash tun or other vessel duly entered with the proper officer of excise for that purpose:
9. The brewer shall permit any officer of excise to gauge any wort or solution made from sugar, and also to take a sample or samples from such wort or solution; and if upon examination of the sample or samples it shall be found that the wort or solution contained an amount of sugar exceeding the quantity used in making such wort or solution, according to the entry made by the brewer in the proper book or paper provided for that purpose, such amount to be ascertained according to a table to be approved by the Commissioners of Inland Revenue for showing the quantity of sugar contained in any given quantity of wort or solution, according to the specific gravity thereof as ascertained by any saccharometer ordered to be used by the said Commissioners, the brewer shall be deemed to have committed an offence against this section; provided that it shall not be necessary on the trial of any information or other proceeding to produce or give in evidence any order of the said Commissioners approving such table, or ordering the use of any saccharometer.

For any offence against this section the brewer shall forfeit the penalty of one hundred pounds.

9. The proper officer of excise shall keep a stock account of the sugar received and used by a brewer of beer for sale for brewing and making beer, and shall debit the brewer with the quantity of sugar received, and shall credit him with the quantities used in brewing, and if upon taking the stock at any time any officer of excise shall find that the quantity of sugar remaining in the possession of the brewer shall be less than it ought to be, the deficiency shall be deemed to have been used in the brewing and making of beer, and the brewer shall forfeit, over and above any other penalty to which he may be liable, a penalty of double the amount of duty on such deficiency according to the rate of excise duty payable on sugar used in the brewing and making of beer at the time such deficiency shall be found, but the said penalty of double duty shall not be incurred if the deficiency shall be less than a quantity equal to two per cent. upon the balance remaining at the last preceding stock taking added to the quantities subsequently received: Provided always, that in taking the account of the stock of sugar in the possession of a brewer the weight that shall at any time have been

marked upon any package of sugar by any officer of customs or excise shall be deemed to be the true weight, unless such package shall have since undergone some alteration, or the officer of excise who shall take the stock shall be dissatisfied with the weight so marked.

10. Whereas by the laws in force every brewer of beer for sale is required to enter in the book or paper provided for the purpose of his entering therein the quantity of malt and sugar intended to be used by him in the brewing of beer the particular hour of the day at which he intends to mash any malt or to dissolve any sugar: Be it enacted, that every such brewer shall also enter in the said book or paper the respective quantities of the malt and sugar intended to be used two hours at the least before the particular hour which he shall have entered in the said book or paper as the hour at which he intends to mash the malt or to dissolve the sugar, under the like penalty for any refusal or neglect to make such entry as is hereby directed to be made in such book or paper, or for cancelling, obliterating, or altering the same, as by the laws in force such brewer is subject and liable to for any refusal or neglect to make any other entry therein, or for cancelling, obliterating, or altering any such other entry.

#### *Horses kept for Husbandry.*

11. Whereas doubts have arisen with respect to the liability of horses or mules kept solely for the purpose of husbandry to duty: Be it enacted, that from and after the passing of this Act no person shall be required to take out a license under the Act of the thirty-second and thirty-third years of the reign of Her present Majesty, chapter fourteen, for any horse or mule kept by him solely for the purpose of husbandry, on account of such horse or mule being used or employed in drawing materials for the repair of roads and highways of the parish of which he is a rated occupier, and whether for hire or otherwise.

### PART III.

#### AS TO STAMP DUTIES.

12. On the first day of October one thousand eight hundred and seventy the stamp duties on newspapers shall cease and determine.

13. On the first day of July one thousand eight hundred and seventy the stamp duties on policies of insurance under the tenth section of the Act passed in the twenty-eighth and twenty-ninth years of Her Majesty's reign, chapter ninety-six, shall cease and determine, and in lieu thereof, on and after the first day of July one thousand eight hundred and seventy, there shall be charged and paid upon and for every policy of insurance, for

any payment agreed to be made upon the death of any person, only from accident or violence, or otherwise than from a natural cause, or as compensation for personal injury, or by way of indemnity against loss or damage of or to any property, a stamp duty of one penny.

#### PART IV.

##### AS TO INCOME TAX.

14. There shall be charged, collected, and paid, for the use of Her Majesty, her heirs and successors, the duties of income tax specified in schedule (C.) to this Act; and all such provisions contained in any Act relating to the duties of income tax as were in force on the fifth day of April one thousand eight hundred and seventy, and are not repealed by this Act, shall have full force and effect with respect to the said duties of income tax granted by this Act, so far as the same shall be consistent with the provisions of this Act; and for the purposes of this Act the

year one thousand eight hundred and sixty-two mentioned in the forty-third section of the Act passed in the twenty-fifth year of Her Majesty's reign, chapter twenty-two, shall be read as and deemed to mean the year one thousand eight hundred and seventy.

15. The provisions contained in the sixth and seventh sections of the Act passed in the thirty-second and thirty-third years of Her Majesty's reign, chapter fourteen, are hereby repealed.

#### PART V.

##### AS TO DUTIES ON INHABITED HOUSES.

16. The poundage now payable to collectors in respect of the amount of the duties on inhabited houses collected and paid to the proper officer for receipt shall be divided in each separate collection between the assessors and collectors in equal proportions.

#### SCHEDULE (A.)

##### *Containing the Duties of Customs granted by this Act.*

On and after the under-mentioned dates, in lieu of the duties of customs now charged on the articles under mentioned, the following duties of customs shall be charged thereon on importation into Great Britain or Ireland, viz. :—

On and after the second day of May one thousand eight hundred and seventy :—

Sugar, viz. :— £ s. d.

Candy, brown or white, refined sugar, or sugar rendered by any process equal in quality thereto, and manufactures of refined sugar - the cwt. 0 6 0

On and after the thirteenth day of April one thousand eight hundred and seventy :—

Sugar not equal to refined :— £ s. d.

First class - - the cwt. 0 5 8

Second class - - - - - " 0 5 3

Third class - - - - - " 0 4 9

Fourth class, including

cane juice - - - - - " 0 4 0

Molasses - - - - - " 0 1 9

Almonds, paste of - - - - - " 0 4 8

Cherries, dried - - - - - " 0 4 8

Comfits, dry - - - - - " 0 4 8

Confectionery, not otherwise enumerated - - - - - " 0 4 8

Ginger, preserved - - - - - " 0 4 8

Marmalade - - - - - " 0 4 8

Succades, including all

fruits and vegetables

preserved in sugar,

not otherwise enumerated - - - - - " 0 4 8

And the said duties shall be paid on the weights ascertained at landing.

On and after the under-mentioned dates, in lieu of the drawbacks now allowed on the under-mentioned descriptions of sugar refined in Great Britain or Ireland on the exportation thereof to foreign parts, or on removal to the Isle of Man for consumption there, or on deposit in any approved warehouse, upon such terms and subject to such regulations as the Commissioners of Customs may direct for delivery from such warehouse as ships stores only, or for the purpose of sweetening British spirits in bond, the following drawbacks shall be paid and allowed; (that is to say.)

On and after the second day of May one thousand eight hundred and seventy :— £ s. d.

Upon refined sugar in loaf, complete and whole, or lumps duly refined, having been perfectly clarified and thoroughly dried in the stove, and being of an uniform whiteness throughout, and upon such sugar pounded, crushed, or broken in a warehouse approved by the Commissioners of Customs, such sugar having been there first inspected by the officers of customs in lumps or loaves as if for immediate shipment, and then packed for exportation in the presence of such officers, and at the expense of the exporter; and upon candy for every cwt. 0 6 0



Upon refined sugar unstoved, £ s. d.  
pounded, crushed, or broken,  
and not in any way inferior to  
the export standard sample  
No. 2, approved by the Lords  
of the Treasury, and which  
shall not contain more than  
five per centum of moisture  
over and above what the  
same would contain if tho-  
roughly dried in the stove

for every cwt. 0 5 9

And on and after the thirteenth day of April  
one thousand eight hundred and seventy:—

Upon sugar refined by the cen-  
trifugal or by any other pro-  
cess, and not in any way  
inferior to the export stan-  
dard sample No. 1, approved  
by the Lords of the Treasury

for every cwt. 0 6 0

Upon other refined sugar un-  
stoved, being bastards or  
pieces, ground, powdered, or  
crushed:

— Not in any way inferior  
to the export standard  
sample No. 3, approved  
by the Lords of the Treas-  
ury - for every cwt. 0 5 8

— Not in any way inferior  
to the export standard  
sample No. 4, approved  
by the Lords of the Treas-  
ury - for every cwt. 0 5 3

— Not in any way inferior  
to the export standard  
sample No. 5, approved  
by the Lords of the Treas-  
ury - for every cwt. 0 4 9

— Inferior to the above  
last-mentioned standard  
sample - for every cwt. 0 4 0

From and after the passing of this Act, in lieu  
of the duties of customs now charged on the  
articles under mentioned, the following duties of  
customs shall be charged thereon upon the impor-  
tation thereof into Great Britain or Ireland, viz.:—

Perfumed spirits and Cologne water,  
being mixed with any article so  
that the degree of strength cannot  
be ascertained by Sykes' hydro-  
meter - - the gallon 0 16 6

The duties of customs now charged on tea  
shall continue to be levied and charged on and  
after the first day of August one thousand eight  
hundred and seventy, until the first day of  
August one thousand eight hundred and seventy-  
one, on importation into Great Britain or Ireland;  
that is to say,—

Tea - - - the lb. 0 0 6

## SCHEDULE (B.)

### Containing the Duties of Excise granted by this Act.

In lieu of the duties of excise now chargeable  
on sugar made in the United Kingdom, the fol-  
lowing duties of excise shall be charged thereon;  
that is to say,

On and after the second day of May one thou-  
sand eight hundred and seventy:—

Candy, brown or white, refined £ s. d.  
sugar, or sugar rendered by any  
process equal in quality thereto,  
and manufactures of refined  
sugar - - the cwt. 0 6 0

On and after the thirteenth day of April one  
thousand eight hundred and seventy:—

Sugar not equal to refined:—  
First class - - the cwt. 0 5 8  
Second class - - „ 0 5 3  
Third class - - „ 0 4 9  
Fourth class - - „ 0 4 0  
Molasses - - „ 0 1 9

In lieu of the duty of excise now chargeable  
upon sugar used in brewing, there shall be  
charged, on and after the thirteenth day of April  
one thousand eight hundred and seventy, upon  
every hundredweight, and in proportion for any  
fractional part of a hundredweight, of all sugar  
which shall be used by any brewer of beer for  
sale in the brewing or making of beer, the excise  
duty of 7s. 6d.

## SCHEDULE (C.)

### Containing the Duties of Income Tax granted by this Act.

For one year, commencing on the sixth day of  
April one thousand eight hundred and seventy,  
for and in respect of all property, profits, and  
gains mentioned or described as chargeable in  
the Act passed in the sixteenth and seventeenth  
years of Her Majesty's reign, chapter thirty-four,  
for granting to Her Majesty duties on profits  
arising from property, professions, trades, and  
offices, the following duties shall be charged;  
(that is to say,)

For every twenty shillings of the annual value  
or amount of all such property, profits, and  
gains, (except those chargeable under sche-  
dule (B.) of the said Act,) the duty of  
fourpence.

And for and in respect of the occupation of  
lands, tenements, hereditaments, and heritages,  
chargeable under schedule (B.) of the said Act,

for every twenty shillings of the annual value thereof:—

In England, the duty of twopence, and in Scotland and Ireland respectively the duty of one penny halfpenny.

Subject to the provisions contained in section 3 of the Act 26 Victoria, chapter 22, for the exemption of persons whose whole income from every source is under 100*l.* a year, and relief of those whose income is under 200*l.* a year.

### CHAP. 33.

#### *The Salmon Acts Amendment Act, 1870.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Commencement of Act.*
3. *Amendment of sect. 3. of 26 Vict. c. 10.*
4. *Amendment of sect. 65. of 28 & 29 Vict. c. 121.*

An Act to amend the Acts relating to the Export of unseasonable Salmon.  
(1st August 1870.)

WHEREAS by the third section of "The Salmon Acts Amendment Act, 1863," it is amongst other things provided, that "the burden of proving that any salmon entered for exportation from any part of the United Kingdom to parts beyond the seas between the third day of September and the second day of February following is not so entered in contravention of the said Act shall lie on the person entering the same for exportation :"

And whereas it is expedient to make further provision for preventing the exportation of salmon that cannot legally be sold within the limits of the United Kingdom :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as "The Salmon Acts Amendment Act, 1870."

2. This Act shall not come into operation before the third day of September one thousand eight hundred and seventy, which day is herein-after referred to as "the commencement of this Act."

3. From and after the commencement of this Act, the said third section of "The Salmon Acts Amendment Act, 1863," shall be read and construed as if the words "second day of February" were omitted therefrom, and the words "thirtieth day of April" were inserted instead of the said omitted words.

4. The sixty-fifth section of "The Salmon Fishery Act, 1865," shall be read and construed as if the words "second day of February" were omitted therefrom, and the words "thirtieth day of April" were inserted instead of the said omitted words.

### CHAP. 34.

#### *Charitable Funds Investment.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Corporations and trustees holding money in trust for any public or charitable purpose may invest the same in real securities.*
2. *Proviso for cases in which the equity of redemption of the premises may be barred or released.*
3. *Interpretation of terms.*

**An Act to amend the Law as to the Investment on Real Securities of Trust Funds held for public and charitable purposes.**  
(1st August 1870.)

WHEREAS it is expedient to amend the law relating to the investment on real securities of trust funds held for public and charitable purposes:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. It shall be lawful for all corporations and trustees in the United Kingdom holding moneys in trust for any public or charitable purpose to invest such moneys on any real security authorised by or consistent with the trusts on which such moneys are held, without being deemed thereby to have acquired or become possessed of any land within the meaning of the laws relating to mortmain, or of any prohibition or restraint against the holding of land by such corporations or trustees contained in any charter or Act of Parliament; and no contract for or conveyance of any interest in land made *bonâ fide* for the purpose only of such security shall be deemed

void by reason of any non-compliance with the conditions and solemnities required by an Act passed in the ninth year of King George the Second, intituled "An Act to restrain the disposition of lands whereby the same become unalienable."

2. Provided always, that in every case in which the equity of redemption of the premises comprised in any such security shall become liable to foreclosure, or otherwise barred or released, the same shall be thenceforth held in trust to be sold and converted into money, and shall be sold accordingly; and if any decree shall be made in any suit for the purpose of redeeming or enforcing such security, such decree shall direct a sale (in default of redemption) and not a foreclosure of such premises.

3. The words "real security" in this Act shall include all mortgages or charges, legal or equitable, of or upon lands or hereditaments of any tenure, or of or upon any estate or interest therein or any charge or encumbrance thereon; and the word "conveyance" shall include all grants, releases, transfers, assignments, appointments, assurances, orders, surrenders, and admissions whatsoever operating to pass or vest any estate or interest, at law or in equity, in the premises comprised in any real security.

---

CHAP. 35.

*The Apportionment Act, 1870.*

---

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Rents and periodical payments shall accrue from day to day and be apportionable in respect of time.*
3. *Apportioned part of rent, &c. shall be payable when the next entire portion shall have become due.*
4. *Persons shall have the same remedies for recovering apportioned parts as for entire portions. Proviso as to rents reserved in certain cases.*
5. *Interpretation of terms.*
6. *Act not to apply to policies of assurance;*
7. *Nor where stipulation made to the contrary.*

**An Act for the better Apportionment of Rents and other periodical Payments.**  
(1st August 1870.)

WHEREAS rents and some other periodical payments are not at common law apportionable (like interest on money lent) in respect of time, and for remedy of some of the mischiefs and inconveniences thereby arising divers statutes have been passed in the eleventh year of the reign

of His late Majesty King George the Second (chapter nineteen), and in the session of Parliament holden in the fourth and fifth years of His late Majesty King William the Fourth (chapter twenty-two), and in the session of Parliament held in the sixth and seventh years of His late Majesty King William the Fourth (chapter seventy-one), and in the session of Parliament held in the fourteenth and fifteenth years of Her present Majesty (chapter twenty-five), and in the session of Parliament held in

the twenty-third and twenty-fourth years of Her present Majesty (chapter one hundred and fifty-four) :

And whereas it is expedient to make provision for the remedy of all such mischiefs and inconveniences :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as "The Apportionment Act, 1870."

2. From and after the passing of this Act, all rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly.

3. The apportioned part of any such rent, annuity, dividend, or other payment shall be payable or recoverable in the case of a continuing rent, annuity, or other such payment when the entire portion of which such apportioned part shall form part shall become due and payable, and not before, and in the case of a rent, annuity, or other such payment determined by re-entry, death, or otherwise when the next entire portion of the same would have been payable if the same had not so determined, and not before.

4. All persons and their respective heirs, executors, administrators, and assigns, and also the executors, administrators, and assigns respectively of persons whose interests determine with their own deaths, shall have such or the same remedies at law and in equity for recovering such apportioned parts as aforesaid when payable (allowing proportionate parts of all just allowances) as they respectively would have had for recovering such entire portions as aforesaid if entitled thereto respectively ; provided that persons liable to pay rents reserved out of or charged

on lands or other hereditaments of any tenure, and the same lands or other hereditaments, shall not be resorted to for any such apportioned part forming part of an entire or continuing rent as aforesaid specifically, but the entire or continuing rent, including such apportioned part, shall be recovered and received by the heir or other person who, if the rent had not been apportionable under this Act, or otherwise, would have been entitled to such entire or continuing rent, and such apportioned part shall be recoverable from such heir or other person by the executors or other parties entitled under this Act to the same by action at law or suit in equity.

5. In the construction of this Act—

The word "rents" includes rent service, rent-charge, and rent seck, and also tithes and all periodical payments or renderings in lieu of or in the nature of rent or tithe.

The word "annuities" includes salaries and pensions.

The word "dividends" includes (besides dividends strictly so called) all payments made by the name of dividend, bonus, or otherwise out of the revenue of trading or other public companies, divisible between all or any of the members of such respective companies, whether such payments shall be usually made or declared at any fixed times or otherwise ; and all such divisible revenue shall, for the purposes of this Act, be deemed to have accrued by equal daily increment during and within the period for or in respect of which the payment of the same revenue shall be declared or expressed to be made, but the said word "dividend" does not include payments in the nature of a return or reimbursement of capital.

6. Nothing in this Act contained shall render apportionable any annual sums made payable in policies of assurance of any description.

7. The provisions of this Act shall not extend to any case in which it is or shall be expressly stipulated that no apportionment shall take place.

## CHAP. 36.

### *The Cattle Disease (Ireland) Amendment Act, 1870.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Extending provisions of 29 & 30 Vict. c. 4. relating to providing and applying fund for extinguishing rinderpest, to all cases of contagious or infectious cattle disease.*
2. *Power to Lord Lieutenant and Privy Council to make rules to carry Act into effect.*

3. *Steamboat company and other companies to cleanse and disinfect, &c.*
4. *Water and food to be provided by railway companies.*
5. *Animals landed in contravention of order to be forfeited.*
6. *Evidence of orders.*
7. *Certain acts to be offences under this Act.*
8. *Penalty for contravening provisions of this Act, or orders made in pursuance thereof.*
9. *Recovery and application of penalties.*
10. *Proceedings.*
11. *Certificate of inspector under the "Cattle Disease (Ireland) Act, 1866," or this Act.*
12. *Interpretation.*
13. *This Act to be construed with Act of 1866.*
14. *Short title.*

### An Act to amend "The Cattle Disease Act (Ireland), 1866."

(1st August 1870.)

WHEREAS it is expedient to amend "The Cattle Disease Act (Ireland), 1866.:"

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows ; (that is to say,)

1. The provisions of sections ten, eleven, and twelve of the said "Cattle Disease Act (Ireland), 1866," relating to the providing a fund for the purposes in section ten of the said Act mentioned, in case the cattle disease known as the rinderpest should appear in Ireland, and to the application of such fund, shall extend and apply to the providing and application of a fund for all or any of the additional purposes following ; (that is to say,)

- (1.) For preventing the introduction into Ireland of the cattle disease known as the "cattle plague," or "rinderpest"; and,
- (2.) For preventing the introduction into Ireland, the occurrence or the spreading therein, of any infectious or contagious disease of cattle, sheep, swine, or other animals.

2. The Lord Lieutenant, by and with the advice of Her Majesty's Privy Council in Ireland, may, from time to time, make such orders as they may think expedient for all and any of the purposes following ; (that is to say,)

For insuring for animals brought by sea to ports in Ireland, or shipped from any port in Ireland to any part of England, Wales, or Scotland, a proper supply of food and water during the passage and on landing :

For protecting such animals from unnecessary suffering during the passage and on landing:

For protecting animals from unnecessary suffering during inland transit :

For prohibiting or regulating the movement of animals, and the removal of dead animals or parts thereof, and of hay, straw, litter, dung, and other things likely to spread contagious or infectious diseases among animals :

For requiring the cleansing and disinfecting of yards, sheds, stables, fields, and other premises :

For regulating the disposal of animals dying while affected with a contagious or infectious disease :

For requiring notice of the appearance of any such disease among animals :

For prohibiting or regulating the holding of markets, fairs, exhibitions, or sales of animals :

And generally any orders whatsoever which they think it expedient to make for the better execution of this Act, or for the purpose of in any manner preventing the introduction or spreading of contagious or infectious disease among animals in Ireland (whether any such orders are of the same kind as the kinds enumerated in this section or not), and may in any such order direct or authorise the slaughtering of animals that are affected with any contagious or infectious disease, or that have been in contact with animals so affected ; and may in any such order direct or authorise the payment of compensation for any animals so slaughtered ; and may in any such order impose penalties for offences against the same, not exceeding the sum of twenty pounds for any such offence, and so that in every such order provision be made that a penalty less than the maximum may be ordered to be paid ; and this section shall extend to horses and all ruminating animals not within the definition of animals in this Act.

Every such order shall have the like force and effect as if it had been enacted by this Act.

3. Every steamboat company, railway company, and other company, and every person carrying animals for hire to or from or in any part of Ireland, shall thoroughly cleanse and disinfect in such manner as the Lord Lieutenant, by and with the advice of Her Majesty's Privy Council in Ireland, from time to time by order may direct, all steamers, vessels, boats, pens, carriages, trucks,

horse boxes, and vehicles used by such company or person for the carrying of animals.

If any company or person on any occasion fails to comply with the requisitions of any such order, such company or person shall on every such occasion be deemed guilty of an offence against this Act.

4. Every railway company shall make a provision, to the satisfaction of the Lord Lieutenant and Her Majesty's Privy Council in Ireland, of water and food, or either of them, at such stations as they from time to time, by general or specific description, direct for animals carried or about to be or having been carried on the railway of the company; and such water and food, or either of them, shall be supplied to any such animal by the company carrying it, on the request in writing of the consignor thereof, or on the request of any person in charge thereof; and the company so supplying water and food, or either of them, may make in respect thereof such reasonable charges, if any, as the Lord Lieutenant and Her Majesty's Privy Council in Ireland may by order approve, in addition to such charges as they are for the time being authorised to make in respect of the carriage of animals; and the amount of such additional charges accrued due in respect of any animal shall be a debt from the consignor and from the consignee thereof to the company, and shall be recoverable by the company from either of them, by proceedings in any court of competent jurisdiction, and the company shall have a lien for the amount thereof on the animal in respect of which the same accrued due, and on any other animal at any time consigned by the same person to be carried by the company.

If any company on any occasion fails to comply with the requirements of this section they shall, on every such occasion, be deemed guilty of an offence against this Act. If in the case of any animal such a request as aforesaid is not made, so that the animal remains without a supply of water for a longer time than twelve consecutive hours, the consignor, and the person in charge of the animal, shall each be deemed guilty of an offence against this Act; and it shall lie on the person accused to prove the time within which the animal has had a supply of water.

5. If any person lands or attempts to land in any port or place in Ireland, or ships or attempts to ship from any port or place in Ireland to any part of England, Wales, or Scotland, any animal or thing in contravention of any order under this Act, such animal or thing shall be forfeited in like manner as goods the importation whereof is prohibited by the Acts relating to the customs are liable to be forfeited; and the person so offending shall be liable to such penalties as are

imposed on persons importing or attempting to import goods the importation whereof is prohibited by the Acts relating to the customs, without prejudice to any proceeding against him under this Act or under any such order, but so that no person be punished twice for the same offence.

6. An order or regulation made or issued by the Lord Lieutenant by and with the advice of Her Majesty's Privy Council in Ireland under this Act, or the "Cattle Disease (Ireland) Act, 1866," may be proved as follows:—By the production of a printed copy of such order or regulation purporting to be certified to be a true copy by the clerk of the said Council, or the person for the time acting as such.

And any such order or regulation shall, until the contrary is proved, be deemed to have been duly made and issued at the time at which it bears date.

7. If any person does any of the following things he shall be guilty of an offence against this Act:

- (1.) If he does anything for which a licence is requisite under this Act, or any order under this Act, without having obtained a licence:
- (2.) If, where such a licence is requisite, having obtained a licence in that behalf, he does the thing licensed after the licence has expired:
- (3.) If he uses, or offers or attempts to use, as such a licence, an instrument not being a complete licence, or an instrument untruly purporting or appearing to be a licence, unless he shows, to the satisfaction of the justice before whom he is charged, that he did not know of such incompleteness or untruth, and that he could not with reasonable diligence have obtained such knowledge:
- (4.) If he fabricates or alters, or offers or utters, knowing the same to be fabricated or altered, any licence, declaration, certificate, or instrument made or issued, or purporting to be made or issued, under or for any purpose of this Act, or any such order:
- (5.) If for the purpose of obtaining any licence, certificate, or instrument, under or for the purposes of any such provision, he makes a declaration or representation false in any material particular, unless he shows, to the satisfaction of the justice before whom he is charged, that he did not know of such falsity, and that he could not with reasonable diligence have obtained such knowledge:
- (6.) If he obtains or endeavours to obtain any such licence, certificate, or instrument, by

means of any false pretence, unless he shows, to the satisfaction of the justice before whom he is charged, that he did not know of such falsity, and that he could not with reasonable diligence have obtained such knowledge:

- (7.) If he grants or issues any such licence, certificate, or instruments, being false in any material particular, unless he shows, to the satisfaction of the justice before whom he is charged, that he did not know of such falsity, and that he could not with reasonable diligence have obtained such knowledge:

And in such case he shall be liable, on conviction, in the discretion of the justice, to be imprisoned for any term not exceeding three months, with or without hard labour, in lieu of the pecuniary penalty to which he is liable under this Act.

8. If any person acts in contravention of any provisions in this Act contained, or if any person is guilty of any offence against this Act, or any order made in pursuance of this Act, he shall for each offence incur a penalty not exceeding twenty pounds, and where any such act or offence is committed with respect to more than four animals, a penalty not exceeding five pounds for each animal may be imposed instead of the penalty of twenty pounds.

Where any such offence is committed in relation to offal, dung, hay, straw, litter, or other thing, a further penalty not exceeding ten pounds may be imposed in respect of every half ton in weight of such offal or other thing after the first half ton.

9. Every penalty recoverable under the provisions of this Act shall be recovered and applied in the same manner as penalties are recovered and applied under section five of the "Cattle Disease (Ireland) Act, 1866."

10. For the purpose of proceedings under this Act, or any order made hereunder, or under the "Cattle Disease (Ireland) Act, 1866," or any order made thereunder, every offence against this Act, or any such order or regulation, shall be deemed to have been committed, and every cause of complaint under this Act, or any such order or regulation, shall be deemed to have arisen, either in the place in which the same actually

was committed or arose, or in any place in which the person charged or complained against happens to be.

11. The certificate of an inspector, authorised to act as such under the said "Cattle Disease (Ireland) Act, 1866," or under this Act, that an animal is affected with an infectious or contagious disease, shall for the purpose of the said Acts be conclusive evidence in all courts of justice.

12. In this Act, or Orders in Council made thereunder—

The term "Lord Lieutenant" shall mean the Lord Lieutenant of Ireland, and the Lords Justices or other chief governor or governors of Ireland for the time being:

The term "cattle" means bulls, cows, oxen, heifers, and calves:

The term "animal" means, except where it is otherwise expressed, cattle, sheep, goats, and swine:

The term "foreign," as applied to cattle or animals, means brought from any place out of the United Kingdom of Great Britain and Ireland:

The term "contagious or infectious disease" includes cattle plague, pleuro-pneumonia, foot and mouth disease, sheep-pox, sheep-scab, and glanders, and any disease which the Lord Lieutenant or other chief governor or governors of Ireland, by and with the advice of Her Majesty's Privy Council in Ireland, may from time to time, by order, declare to be a contagious or infectious disease for the purpose of this Act:

The term "railway company" includes a company or person working a railway under a lease or otherwise:

The term "person" includes a body corporate or incorporate:

The word "month" shall include a calendar month.

13. This Act and the said Cattle Disease Act (Ireland), 1866, shall be construed together, and all provisions of the said recited Act shall remain in full force, save to the extent to which they have been modified or altered by this Act.

14. This Act may be cited for all purposes as "The Cattle Disease (Ireland) Amendment Act, 1870."

## CHAP. 37.

*Magistrates in populous Places (Scotland).*

## ABSTRACT OF THE ENACTMENTS.

1. *Senior magistrate of a populous place to be a justice of the peace and a commissioner of supply.*

An Act to enable the senior Magistrate of populous Places in Scotland to act ex officio as a Justice of the Peace and Commissioner of Supply for the County in which the said populous Place is situated. (1st August 1870.)

WHEREAS an Act was passed in the twenty-fifth and twenty-sixth years of Her present Majesty, chapter one hundred and one, intituled "An Act to make more effectual provision for regulating the police of towns and populous places in Scotland, and for lighting, cleansing, paving, draining, supplying water to, and improving the same, and also for promoting the public health thereof:"

And whereas various populous places have been established and magistrates and commissioners therein appointed under the provisions of the said recited Act and other Acts therein recited, and it is expedient that the senior police magistrate of such places should be placed in the same position with regard to the county in which the

said populous places are situated as the provosts of royal and parliamentary burghs:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same:

1. In every populous place whereof the boundaries have been ascertained and fixed under the provisions of the said recited Act or the Act therein first recited, and which has adopted either of the said Acts so far as regards lighting, cleansing, draining, and the supply of water, the senior police magistrate elected under the provisions of either of the said Acts shall be ex officio a justice of the peace and commissioner of supply of the county within which the said populous place is situated; and where any such populous place is partly situated in each of two or more counties, such senior police magistrate shall in like manner be ex officio a justice of the peace and a commissioner of supply of each and all of the several counties in which any part of such populous place may be situated.

## CHAP. 38.

*Sligo and Cashel Disfranchisement.*

## ABSTRACT OF THE ENACTMENTS.

1. *Disfranchisement of Sligo and Cashel.*
2. *Persons reported guilty of bribery in Sligo disqualified as voters for the county of Sligo in respect of qualification arising in said borough.*
3. *Persons reported guilty of bribery in Cashel disqualified as voters for the county of Tipperary in respect of qualification arising in said borough.*
4. *Evidence of reports.*

An Act to disfranchise the Boroughs of Sligo and Cashel. (1st August 1870.)

WHEREAS representations were made to Her Majesty, in joint addresses of both Houses of Parliament, to the effect that the judges selected in pursuance of The Parliamentary Elections Act, 1868, for the trial of the petitions complaining of

undue elections and returns for the boroughs of Sligo and Cashel at the elections of members to serve in Parliament respectively held for the said boroughs in the month of November one thousand eight hundred and sixty-eight, had respectively reported to the House of Commons as to the said borough of Sligo that corrupt practices extensively prevailed at the said election, and as to the



said borough of Cashel that there was reason to believe that the corrupt practice of bribery did extensively prevail at the said election :

And whereas, in pursuance of such representations, Commissioners were appointed under two several commissions, both dated the twenty-third day of June one thousand eight hundred and sixty-nine, for the purpose of making inquiry into the existence of such bribery and corrupt practices, in pursuance of the Act of Parliament passed in the sixteenth year of the reign of Her present Majesty, chapter fifty-seven, intituled "An Act to provide for the more effectual inquiry into the existence of corrupt practices at elections for members to serve in Parliament :"

And whereas the Commissioners so appointed reported to Her Majesty :

(1.) As respects the said borough of Sligo, that corrupt practices had extensively prevailed in Sligo at the elections of the years one thousand eight hundred and sixty, one thousand eight hundred and sixty-five, and the said election of the year one thousand eight hundred and sixty-eight :

(2.) As respects the said borough of Cashel, that the election of the year one thousand eight hundred and sixty-five was conducted in a corrupt manner on the part of one of the candidates, and that corrupt practices were committed at the said election, and that the said election of the year one thousand eight hundred and sixty-eight was conducted in a corrupt manner on the part of each of the candidates :

And whereas it appears by the report of the said Commissioners as to the said borough of Cashel, that corrupt practices extensively prevailed in Cashel at both the said elections :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. From and after the passing of this Act, the boroughs of Sligo and Cashel shall respectively

cease to return any member or members to serve in Parliament.

2. Whereas the Commissioners appointed for the purpose of making inquiry into the existence of corrupt practices in the borough of Sligo, by their report, dated the third day of March one thousand eight hundred and seventy, reported to Her Majesty that the persons named in the schedules (E.) and (F.) annexed to their said report had been guilty of bribery in either giving or receiving bribes at the said election in the year one thousand eight hundred and sixty-eight : Be it enacted, that none of the persons so named in the said schedules shall have the right of voting for the county of Sligo in respect of a qualification situated within the said borough of Sligo.

3. Whereas the Commissioners appointed for the purpose of making inquiry into the existence of corrupt practices in the said borough of Cashel, by their report, dated the eighteenth day of December one thousand eight hundred and sixty-nine, reported to Her Majesty that the persons named in the schedules (C.) and (D.) annexed to their said report had been guilty of bribery in either giving or receiving bribes at the said election in the year one thousand eight hundred and sixty-eight : Be it enacted, that none of the persons so named in the said schedules, except Patrick Connor named in the said schedule (C.), shall have the right of voting for the county of Tipperary in respect of a qualification situated within the said borough of Cashel.

4. Any copy of either of the said reports by the said Commissioners appointed for the purpose of making inquiry into the existence of corrupt practices in either of the said boroughs of Sligo or Cashel, with the schedules thereunto annexed, purporting to be printed by the Queen's authority, shall, for the purposes of this Act, be deemed to be sufficient evidence of either of the said reports, and of the schedules annexed thereto.

## CHAP. 39.

### *Ecclesiastical Patronage Transfer.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Provisions of 3 & 4 Vict. c. 113. s. 73., 4 & 5 Vict. c. 39. s. 22., 31 & 32 Vict. c. 114. s. 12., to authorise transfer of any advowson.*

An Act to facilitate transfers of Ecclesiastical Patronage in certain cases.  
(1st August 1870.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The powers and provisions contained in the seventy-third section of the Act of the third and fourth years of Her Majesty, chapter one hundred and thirteen, in the twenty-second section of the Act of the fourth and fifth years of Her Majesty, chapter thirty-nine, and in the twelfth section of the Act of the thirty-first and thirty-second years of Her Majesty, chapter one hundred and four-

teen, shall be held to authorise the transfer, by the process and with the consents therein mentioned, of the ownership of any advowson or other right of patronage in any spiritual preferment, or any estate or interest in the same; provided always, that it shall appear to the Ecclesiastical Commissioners for England, and shall be so stated in the scheme submitted by them to Her Majesty in Council for effecting such transfer, that the same transfer will tend to make better provision for the cure of souls in the parish or district in or in respect of which the right of patronage or advowson arises or exists; and provided always, that such transfer may take effect as from or to any ecclesiastical corporation, aggregate or sole, notwithstanding any statute of mortmain.

---

CHAP. 40.

*New Zealand (Roads, &c.) Loan Act, 1870.*

---

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Power to Treasury to guarantee loan.*
3. *Conditions of guarantee.*
4. *Application of sinking fund.*
5. *Alteration of Act relating to guaranteed loan.*
6. *Issue out of Consolidated Fund.*
7. *Certificate of amount paid out of Consolidated Fund.*
8. *Accounts to be laid before Parliament.*

An Act for authorising a guarantee of a loan to be raised by the Government of New Zealand for the construction of roads, bridges, and communications in that country, and for the introduction of settlers into that country.

(1st August 1870.)

WHEREAS the Government of New Zealand propose to raise by way of loan a sum not exceeding one million pounds for the purposes of the construction of roads, bridges, and communications in that country, and of the introduction of settlers into that country, and it is expedient to authorise the Commissioners of Her Majesty's Treasury, in this Act referred to as "the Treasury," to guarantee such loan :

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of

the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the New Zealand (Roads, &c.) Loan Act, 1870.

2. The Treasury may guarantee, in such manner and form as they think fit, payment of the principal of all or any part of any loan not exceeding one million pounds raised by the Government of New Zealand for the purposes of the construction of roads, bridges, and communications in that country, and of the introduction of settlers into that country, and payment of the interest of any such loan at a rate not exceeding four per cent.

3. The Treasury shall not give any guarantee under this Act, unless and until provision has been made, either before or after the passing of

this Act, by an Act of the Legislature of New Zealand, or otherwise to the satisfaction of the Treasury,—

- (1.) For raising the said loan, and appropriating the same to the purposes mentioned in this Act :
- (2.) For charging the Consolidated Revenue of New Zealand with the payment of the principal and interest of the said loan immediately after the charges on that fund existing at the time of the passing of this Act :
- (3.) For payment by the Government of New Zealand of a sinking fund at the rate of two per centum per annum on the entire amount of the said loan, or so much as is raised for the time being, commencing at the date at which the whole of such loan is raised, or at the expiration of ten years from the passing of the Act (whichever date first happens), and for charging the Consolidated Revenue of New Zealand with the payment of such sinking fund immediately after the principal and interest of the said loan :
- (4.) For charging the Consolidated Revenue of New Zealand with any sum issued out of the Consolidated Fund of the United Kingdom under this Act, with interest thereon at the rate of five per centum per annum, immediately after the sinking fund of the said loan :
- (5.) For rendering to the Governor of New Zealand, for transmission to the Treasury, an annual abstract of the accounts of the expenditure of the money raised by means of the said loan under such heads as the Treasury from time to time desire :
- (6.) For remitting to the Treasury the annual sums for the sinking fund by equal half-yearly payments, and for the investment and accumulation thereof under their direction in the names of four trustees nominated from time to time, two by the Treasury and two by the Government of New Zealand.

The Treasury shall not guarantee in any one year a larger sum than two hundred thousand pounds, and the Treasury, before guaranteeing any portion of the loan after the first, shall satisfy themselves that the portion of the loan already raised has been or is in the course of being spent for the purposes mentioned in this Act.

4. The said sinking fund may be invested in such securities as the Government of New Zea-

land and the Treasury from time to time agree upon, and shall, whether invested or not, be applied from time to time, under the direction of the Treasury, in discharging the principal of the said loan ; and the interest arising from such securities (including the interest on any part of the loan discharged by means of the sinking fund), and the resulting income thereof, shall be invested and applied as part of such sinking fund.

5. Every Act passed by the Legislature of New Zealand which in any way impairs the priority of the charge upon the Consolidated Revenue of New Zealand created by that Legislature of the said loan and the interest and sinking fund thereof, and the sums paid out of the Consolidated Fund of the United Kingdom and the interest thereon, shall, so far only as it impairs such priority, be void, unless such Act contain a suspending clause providing that such Act shall not come into operation until Her Majesty's pleasure thereon has been publicly signified in New Zealand.

6. The Treasury are hereby authorised to cause to be issued from time to time, out of the growing produce of the Consolidated Fund of the United Kingdom, such sums of money as may at any time be required to be paid to fulfil the guarantee under this Act in respect either of principal or interest.

7. The Treasury may, from time to time, certify to one of Her Majesty's Principal Secretaries of State the amount which has been paid out of the Consolidated Fund of the United Kingdom to fulfil the guarantee under this Act, and the date of such payment ; such certificate shall be communicated to the Governor of New Zealand, and shall be conclusive evidence of the amount having been so paid and of the time when the same was so paid.

8. The Treasury shall cause to be prepared and laid before both Houses of Parliament a statement of any guarantee given under this Act, and a copy of any accounts received by them respecting the expenditure of the said loan, and an account of all sums issued out of the Consolidated Fund of the United Kingdom for the purposes of this Act, within one month after the same are so given, received, or issued, if Parliament be then sitting, or if Parliament be not sitting, then within fourteen days after the then next meeting of Parliament.

## CHAP. 41.

*Exchequer Bonds (£1,300,000).*

## ABSTRACT OF THE ENACTMENTS.

1. *Treasury may raise 1,300,000*l.* by Exchequer bonds.*
2. *Interest on bonds, and repayment of principal money.*
3. *Treasury may cause Exchequer bonds to be prepared and issued according to provisions of 29 & 30 Vict. c. 25.*
4. *Persons forging Exchequer bonds, &c. guilty of felony.*
5. *Money raised to be paid to the Consolidated Fund.*
6. *Treasury may borrow 1,300,000*l.* on the credit of bonds, and National Debt Commissioners may purchase bonds with savings banks money.*

An Act for raising the sum of one million three hundred thousand pounds by Exchequer Bonds for the service of the year ending on the thirty-first day of March one thousand eight hundred and seventy-one.

(1st August 1870.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards raising the necessary supplies which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to give and grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Towards raising the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and seventy-one, it shall be lawful for the Commissioners of Her Majesty's Treasury at any time or times, but not later than the thirty-first day of March one thousand eight hundred and seventy-one, to cause any number of Exchequer bonds to be made out at the Bank of England for any sum or sums of money not exceeding in the whole the sum of one million three hundred thousand pounds, and such bonds shall bear such interest as shall be determined by the said Commissioners, not exceeding four pounds per centum per annum, and shall be paid off at par at the expiration of any period or periods not exceeding five years from the date of such bonds.

2. The interest on such bonds shall be paid half-yearly on such days as shall be appointed by the said Commissioners, and shall be charged upon and issued out of the Consolidated Fund of the United Kingdom, or out of the growing produce thereof; and the principal moneys secured by such bonds shall be repaid out of such money as shall be provided by Parliament in that behalf.

3. The Commissioners of Her Majesty's Treasury may from time to time, by warrant under their hands, cause or direct the Exchequer bonds to be issued under the authority of this Act to be prepared for such principal sums, not less in any case than one hundred pounds, together with coupons for the interest becoming due from time to time thereon, in such form and under such regulations as the said Commissioners may think most safe and convenient, and according to the provisions, so far as they relate to Exchequer bonds, of an Act of the twenty-ninth year of Her Majesty, chapter twenty-five, intituled "An Act to consolidate and amend the several laws regulating the preparation, issue, and payment of Exchequer bills and bonds."

4. If any person shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any Exchequer bond issued under this Act, or any coupon for interest accruing thereon, such person shall be guilty of felony, and upon being lawfully convicted thereof shall suffer accordingly.

5. All such sums of money as shall be raised by Exchequer bonds to be made out in pursuance of this Act shall be paid to the account of Her Majesty's Exchequer at the Bank of England, and shall be carried to and form part of the Consolidated Fund of the United Kingdom.

6. The Commissioners of the Treasury may borrow upon the credit of the Exchequer bonds

to be made out in pursuance of this Act, any sum or sums of money not exceeding in the whole the sum of one million three hundred thousand pounds (anything in any Act to the contrary notwithstanding); and the Commis-

sioners for the Reduction of the National Debt may invest, in the purchase of Exchequer bonds issued under the authority of this Act, any money in their hands on account of savings banks, or Post Office savings banks.

---

## CHAP. 42.

### *Petty Customs (Scotland) Abolition.*

---

#### ABSTRACT OF THE ENACTMENTS.

1. *Interpretation of terms.*
  2. *Petty customs may be abolished by council.*
  3. *Saving in respect of creditors.*
  4. *Boundaries.*
  5. *Extent of Act.*
- 

An Act to empower magistrates and town councils of burghs in Scotland to abolish petty customs and to levy a rate in lieu thereof.

(1st August 1870.)

WHEREAS it is expedient to enable the provost, magistrates, and town councils of burghs in Scotland to abolish certain duties or customs styled petty customs, or part thereof, now leviable within certain of such burghs respectively, and to make other provision for the common good of such burghs in lieu thereof:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The word "burgh" shall mean any royal, parliamentary, or other burgh, as defined by the word "burgh" in the General Police and Improvement Act (Scotland), 1862, and in which heretofore petty customs have been levied or leviable.

2 After the thirty-first of December in this present year, the magistrates and council of any burgh may resolve that from a subsequent date, to be specified in such resolution, the petty customs or duties, or part of them, levied or leviable in such burgh, shall be abolished, and that in lieu thereof there shall be levied by way of assessment in such burgh a rate or rates calculated to yield in the whole in the year an amount equal to the net yearly amount of such petty customs, or part of them, and no more, but not exceeding in the whole for any one year the amount of threepence

in the pound sterling on the valuation of the assessable property within the boundaries of such burgh, and from such date such petty customs or duties, or such part thereof, shall be wholly abolished in such burgh, and such rate may be levied either as a separate rate or as part of and in addition to and under the same conditions and subject to the same restrictions and exemptions as any police or burgh rate levied or leviable within such burgh: Provided that no such resolution shall have any force or effect unless a month's previous notice shall have been given of the meeting of the magistrates and council whereat such resolution was moved, and of the intention to move such resolution, in one or more public newspapers circulating within such burgh, and also in the manner in which notices of meetings of magistrates and town councils are usually given in such burgh, and unless also two thirds at the least of the members of the council present at such meeting concur in such resolution.

3. On such petty customs or duties, or part of them, levied or leviable in such burgh, being abolished in manner herein-before provided, the rate or rates to be levied in lieu thereof shall, ipso facto, come in place of any security held by any creditor or creditors of such burgh over such petty customs or duties, or part of them, but nothing herein contained, nor any such resolution, shall in any way affect, diminish, or take away the right, claim, or title of any creditor of any such burgh to any payment or any security out of or upon the common good of such burgh, nor shall any such resolution be of any validity or effect so long as any tack or lease of such petty customs shall be in force, or until such

lease or tack shall have terminated by surrender or effluxion of time, or otherwise, nor without the consent of the creditor, so long as any such petty customs or any of them shall be and continue assigned as a special security to any creditor of such burgh.

4. The boundaries of any such burgh within which any such rate in lieu of petty customs shall

be levied or leviable shall be the boundaries within which the assessment and rate for police purposes of such burgh shall be levied or leviable: Provided that such rate shall not be levied or leviable beyond the boundaries of any burgh within which such petty customs have heretofore been levied.

5. This Act shall only extend to Scotland.

#### CHAP. 43.

### *The Customs Refined Sugar Duties (Isle of Man) Act, 1870.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Alteration of duties.*

An Act to alter certain Duties of Customs upon Refined Sugar in the Isle of Man. (1st August 1870.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as "The Customs Refined Sugar Duties (Isle of Man) Act, 1870."

2. After the passing of this Act, in lieu of the duty of six shillings the hundredweight, now payable on sugar candy, white or brown, refined sugar, or sugar rendered by any process equal to refined, foreign or British, on the importation thereof into the Isle of Man, there shall be paid the duty of four shillings the hundredweight; and so much of the Act of the session of the twenty-ninth Victoria, chapter twenty-three, as imposed the said duty of six shillings the hundredweight is hereby repealed.

#### CHAP. 44.

### *Stamp Duty on Leases.*

#### ABSTRACT OF THE ENACTMENTS.

1. *As to stamps on leases.*

An Act to declare the Stamp Duty chargeable on certain Leases. (1st August 1870.)

WHEREAS it was decided on the twenty-first day of January one thousand eight hundred and seventy by Her Majesty's Court of Exchequer, on the hearing of an appeal from the determination of the Commissioners of Inland Revenue on a question relating to stamp duty, that a certain lease made in consideration of a yearly rent thereby reserved, and in further consideration of a

covenant by the lessee to complete unfinished houses which were at the date of the lease standing upon the demised land, was chargeable, according to the proper construction of the sixteenth section of an Act passed in the seventeenth and eighteenth years of Her Majesty's reign, chapter eighty-three, as if it were a separate lease made for such further consideration alone, with the stamp duty of thirty-five shillings, in addition to the ad valorem duty with which it was chargeable in respect of the yearly rent:

And whereas it is considered that the principle of the said decision is applicable to every lease

made on or since the tenth day of October one thousand eight hundred and fifty-four, being the day on which the said Act came into operation, for any consideration or considerations in respect whereof it is chargeable with ad valorem duty, and in further consideration either of a covenant by the lessee to make or of his having previously made any substantial improvement of or addition to the property demised to him :

And whereas it was generally considered, previously to the said decision, that such leases as are herein-before described were not chargeable with the said additional duty :

And whereas it is expedient that the holders of any such leases made previously to the passing of this Act should be relieved from the payment of the said additional duty, and that such leases

should not in future be chargeable with such additional duty :

Now be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. No lease already made or hereafter to be made for any consideration or considerations in respect whereof it is chargeable with ad valorem stamp duty, and in further consideration either of a covenant by the lessee to make or of his having previously made any substantial improvement of or addition to the property demised to him, or of any usual covenant, shall be deemed to be or to have been chargeable with any stamp duty in respect of such further consideration.

#### CHAP. 45.

#### *Liverpool Admiralty District Registrar's Act, 1870.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Power to establish Court of Admiralty in Liverpool.*
3. *Power to appoint registrar, clerks, and officers.*
4. *Registrar, clerks, and other officers to be appointed by judge.*
5. *To hold office during good behaviour.*
6. *Qualification of registrar.*
7. *Registrar not to practise as attorney in his district.*
8. *Powers of registrar.*
9. *Where suits to be instituted.*
10. *Appeal.*
11. *Power to registrar to summon nautical assessors.*
12. *List of persons qualified to act as nautical assessors to be published in London Gazette.*
13. *Removal of suits or appeal.*
14. *Scale of costs to be prescribed.*
15. *Application of fees.*
16. *General orders for regulating practice, &c. to be made.*
17. *By whom to be made.*
18. *If salaries paid by Parliament fees shall be collected by stamps.*
19. *Act not to abridge power of registrar of High Court of Admiralty.*

An Act for establishing a District Registrar of the High Court of Admiralty in England at Liverpool.

(1st August 1870.)

WHEREAS a large proportion of the entire business now transacted in each year before the High Court of Admiralty of England consists of suits arising from the port of Liverpool :

And whereas it would tend to increase the despatch and to lessen the expense of Admiralty suits if a registry of the said High Court of Admiralty were established at Liverpool :

VOL. XLVIII. LAW. JOUR. STAT.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as the Liverpool Admiralty District Registrar's Act, 1870.

2. There shall be established in Liverpool a registry of the High Court of Admiralty, and it shall be lawful for Her Majesty from time to time by Order in Council to fix the limits of such registry.

L

3. There shall be a registrar for such district, and such clerks and other officers as the judge of the High Court of Admiralty, with the concurrence of the Commissioners of Her Majesty's Treasury, shall consider necessary, but no such registrar, clerk, or other officer shall be entitled to claim any compensation in case his office shall at any time be abolished.

4. The Liverpool district registrar shall be appointed by the judge, with the approval of the Lord High Admiral of the United Kingdom of Great Britain and Ireland for the time being, or of the Lords Commissioners for executing the office of Lord High Admiral, as the case may be. Such clerks and other officers as aforesaid shall be appointed by the judge.

5. The Liverpool district registrar and such clerks and other officers as aforesaid may respectively be removed by the judge for inability or misbehaviour.

6. No person shall be appointed Liverpool district registrar unless he shall have been in practice as an advocate or barrister, proctor, attorney, or solicitor for a period of ten years.

7. It shall not be lawful for the Liverpool district registrar, during the time he shall hold and exercise his office, either directly or indirectly by himself, his partners, clerk, or other person, to practise in his district of the said court, either as barrister or as attorney originally retained or as agent for any other attorney, nor to participate in any costs payable to any attorney in respect of any business done or suit or matter instituted or prosecuted in the district registry; and the Liverpool district registrar being proved to the satisfaction of the said judge of the Court of Admiralty to have so practised, or to have participated in any costs as aforesaid, contrary to the meaning and intent of this Act, shall be deemed to have committed and shall be punishable as and for a contempt of court, and shall be liable to dismissal from his office.

8. The Liverpool district registrar shall have and exercise, in respect of any matter in his registry, all powers held or exercised by the registrar of the High Court of Admiralty of England, by virtue of this or of any former Act or rule.

9. Any suit may be instituted,—

1. In the Liverpool district registry when the ship or property the subject of the suit is at the time of the institution of the suit within the district of such registry :

2. Or when the owner or owners of the ship or property, or the owner or owners of the larger number of shares in the ship, or the

managing owner, or ship's husband, reside at the time of the institution of the suit within the district of such registry :

3. Or when the port of registry of the ship is within the district of such registry :

4. Or when the parties so agree by a memorandum signed by them or their attorneys or agents :

Provided always, that when a suit has been instituted in the Liverpool district registry, no further suit shall be instituted against the same property in the principal registry without leave of the judge, and subject to such terms as to costs and otherwise as he may direct.

10. An appeal may be made to the High Court of Admiralty of England from a final decree or order of the Liverpool district registrar, and by permission of the Liverpool district registrar or of the judge from any interlocutory decree or order therein, on security for costs being first given, and subject to such other provision as general orders shall direct.

11. On the trial of any Admiralty cause subsisting in the Liverpool district registry, before the registrar of such district, it shall be lawful for such registrar, if he shall think fit, and he shall, upon the request of either party, summon to his assistance, in such manner as general orders shall direct, two nautical assessors, and such nautical assessors shall attend and assist accordingly.

12. The Liverpool district registrar shall from time to time frame a list of persons of nautical skill and experience, residing or having places of business within the district, to act as assessors in that district, to be approved by the judge, before whom the same shall be laid by the Liverpool district registrar, and without whose approval it shall have no validity, and shall cause the list, when so approved, to be published in the "London Gazette," and in at least one Liverpool newspaper.

13. Any party to a suit or to an appeal, at any stage of such suit or appeal, may, by the leave of the Court and subject to such terms as to costs or otherwise as the Court may direct, remove any such suit instituted or any such appeal pending in the principal registry to the Liverpool district registry, and any suit instituted or appeal pending in the Liverpool district registry to the principal registry.

14. A scale of costs and charges in Admiralty causes in the Liverpool district registry, and of fees to be taken in the Liverpool district registry, shall be prescribed by general orders.

15. All fees received in the Liverpool district registry shall be applied in the first instance in



the payment of such office expenses and salaries of the clerks employed therein, and in payment to the registrar of such remuneration in lieu of salary as may be determined by general orders; and all such fees shall be accounted for by the Liverpool district registrar, and the surplus, if any, paid over by him to the Commissioners of Her Majesty's Treasury at such period and in such manner as the Commissioners may direct.

16. General orders shall be from time to time made under this Act for the purposes in this Act directed, and for regulating the practice and procedure in the Liverpool district registry, the duties of the registrar and officers thereof, and the fees to be taken therein.

17. General orders under this Act shall be made by the judge of the High Court of Admi-

ralty of England, subject to the approval of Her Majesty's Treasury, in all matters relating to the number of officers or persons employed in the Liverpool district registry, their salaries or emoluments, and to the scale of fees to be taken at the said registry.

18. If at any time such salaries or emoluments are paid out of moneys provided by Parliament, the Lord Chancellor and the said Commissioners may direct that the fees shall be collected by means of stamps, under the provisions of the Public Offices Fees Act, 1866.

19. Nothing in this Act contained shall in any way abridge or lessen the power of the registrar of the High Court of Admiralty in England within the district of the Liverpool registry.

#### CHAP. 46.

### *The Landlord and Tenant (Ireland) Act, 1870.*

#### ABSTRACT OF THE ENACTMENTS.

##### PART I.

#### LAW OF COMPENSATION TO TENANTS.

##### *Claim to Compensation.*

1. *Legality of Ulster tenant-right custom.*
2. *Legality of tenant custom other than Ulster custom.*
3. *Compensation in absence of custom.*
4. *Compensation in respect of improvements. Exception of certain improvements. Exception of certain tenancies.*
5. *Presumption in respect of improvements.*
6. *Permissive registration of improvements.*
7. *Compensation in respect of payment to incoming tenant.*
8. *Compensation in respect of crops.*
9. *Limitation as to disturbance in holding.*
10. *Exception in case of lands required for labourers cottages.*
11. *Derivative title of tenant.*
12. *Partial exemption of certain tenancies.*
13. *Restriction as to compensation in certain cases of assignment.*
14. *Eviction in certain cases not to be deemed a disturbance.*
15. *Exemption of certain lands.*

##### *Proceedings in respect of Claims.*

16. *Proceedings by tenant in respect of claims.*
17. *Proceedings by landlord in respect of claims.*
18. *Equities between landlord and tenant.*
19. *Order of Court to be in writing, &c.*
20. *Provision in case of derivative estates in the same holding.*
21. *Restriction on eviction of tenant.*

*Court to award Compensation.*

- 22. *Court to mean Civil Bill Court or Court of Arbitration.*
- 23. *Civil Bill Court.*
- 24. *Appeal from Civil Bill Court.*
- 25. *Court of Arbitration.*

*Powers of limited Owners.*

- 26. *Interpretation of "limited owner."*
- 27. *Agreement by limited owner.*
- 28. *Power of limited owner to grant leases.*
- 29. *Effect of lease by limited owner.*
- 30. *Leasing powers of Act to be cumulative.*
- 31. *Rules for carrying first part of Act into effect.*

## PART II.

*Sale of Land to Tenants.*

- 32. *Application to "the Court" for sale to tenant of holding.*
- 33. *Restrictions on sale of holding.*
- 34. *As to the sale of holding by the Court.*
- 35. *Estate of purchaser to be free from incumbrances.*
- 36. *Certain charges not incumbrances.*
- 37. *As to the distribution of purchase money.*
- 38. *Costs of sale.*
- 39. *Cost of distribution of purchase money.*
- 40. *General powers of Court in conduct of sale of land.*
- 41. *Rules for carrying second part of this Act into effect.*

## PART III.

*Advances by and Powers of Board.*

- 42. *Advances to landlords for compensation for improvements.*
- 43. *Advances to landlords for improvement of waste lands.*
- 44. *Advances to tenants for purchase of holdings.*
- 45. *Advances to tenants for purchases of holdings in Landed Estates Court.*
- 46. *Landed Estates Court to afford facilities for purchases by occupying tenants.*
- 47. *Advances to facilitate purchases of entire estates.*
- 48. *Advances charged on estate by way of annuity.*
- 49. *Recovery of annuity.*
- 50. *Arrears of annuity.*
- 51. *Power of owner to redeem annuity.*
- 52. *Power of Board to commute and compromise.*
- 53. *Control of Board by Treasury, &c.*
- 54. *As to issues of moneys to the Board by Treasury.*
- 55. *Repayment to Consolidated Fund of moneys advanced.*
- 56. *Duty of Civil Bill Court as to charging orders.*

## PART IV.

## SUPPLEMENTAL PROVISIONS.

*As to Legal Proceedings and Court.*

- 57. *Stamp duty on notice to quit.*
- 58. *Regulations as to notice to quit.*
- 59. *Administration on death of tenant.*
- 60. *Provision as to married women.*
- 61. *Provision as to other persons under disability.*

62. *Additional sittings of Civil Bill Court.*  
 63. *Additional salaries to judges and officers of Civil Bill Courts.*  
 64. *Power to appoint a substitute in Civil Bill Court if judge cannot attend.*

---

#### PART V.

##### *Miscellaneous.*

65. *Mode of payment of grand jury cess in certain cases.*  
 66. *Where value of premises does not exceed 4l. immediate lessor to pay grand jury cess.*  
 67. *Exception as to county cess levied in certain cases.*  
 68. *Non-liability for rent for land covered by public roads.*  
 69. *Tenancies at will.*

##### *Definitions.*

70. *General definitions.*  
 71. *Agricultural or pastoral holdings only subject to this Act.*  
 72. *Short title.*  
 73. *Application of Act.*  
     *Schedule.*
- 

### An Act to amend the Law relating to the Occupation and Ownership of Land in Ireland. (1st August 1870.)

WHEREAS it is expedient to amend the law relating to the occupation and ownership of land in Ireland:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

#### PART I.

##### LAW OF COMPENSATION TO TENANTS.

##### *Claim to Compensation.*

1. The usages prevalent in the province of Ulster, which are known as, and in this Act intended to be included under, the denomination of the Ulster tenant-right custom, are hereby declared to be legal, and shall, in the case of any holding in the province of Ulster proved to be subject thereto, be enforced in manner provided by this Act.

Where the landlord has purchased or acquired or shall hereafter purchase or acquire from the tenant the Ulster tenant-right custom to which his holding is subject, such holding shall thenceforth cease to be subject to the Ulster tenant-right custom.

A tenant of a holding subject to the Ulster tenant-right custom, and who claims the benefit of such custom, shall not be entitled to compensation under any other section of this Act; but a tenant of a holding subject to such custom, but not claiming under the same, shall not be barred from making a claim for compensation, with the

consent of the Court, under any of the other sections of this Act, except the section relating to compensation in respect of payment to incoming tenant; and where such last-mentioned claim has been made, and allowed, such holding shall not be again subject to the Ulster tenant-right custom.

2. If, in the case of any holding not situate within the province of Ulster, it shall appear that an usage prevails which in all essential particulars corresponds with the Ulster tenant-right custom, it shall in like manner, and subject to the like conditions, be deemed legal, and shall be enforced in manner provided by this Act.

Where the landlord has purchased or acquired or shall hereafter purchase or acquire from the tenant the benefit of such usage as aforesaid to which his holding is subject, such holding shall thenceforth cease to be subject to such usage.

A tenant of any holding subject to such usage as aforesaid, and who claims the benefit of the same, shall not be entitled to claim compensation under any other section of this Act, but a tenant of a holding not claiming the benefit of such usage shall not be barred from making a claim for compensation with the consent of the Court under any of the other sections of this Act; and where such last-mentioned claim has been made and allowed, such holding shall not be again subject to such usage as aforesaid.

3. Where the tenant of any holding held by him under a tenancy created after the passing of this Act is not entitled to compensation under sections one and two of this Act, or either of such sections, or if entitled does not seek compensation under said sections or either of them, and is disturbed in his holding by the act of the

landlord, he shall be entitled to such compensation for the loss which the Court shall find to be sustained by him by reason of quitting his holding, to be paid by the landlord, as the Court may think just, so that the sum awarded does not exceed the scale following; that is to say,

In the case of holdings valued under the Acts relating to the valuation of rateable property in Ireland at an annual value of—

- (1.) £10 and under, a sum which shall in no case exceed seven years rent;
- (2.) Above £10 and not exceeding £30, a sum which shall in no case exceed five years rent;
- (3.) Above £30 and not exceeding £40, a sum which shall in no case exceed four years rent;
- (4.) Above £40 and not exceeding £50, a sum which shall in no case exceed three years rent;
- (5.) Above £50 and not exceeding £100, a sum which shall in no case exceed two years rent;
- (6.) Above £100 a sum which shall in no case exceed one year's rent;

But in no case shall the compensation exceed the sum of £250.

Any tenant in a higher class of the scale may, at his option, claim compensation under a lower class, provided such compensation shall not exceed the sum to which he would be entitled under such lower class on the assumption that the annual value of his holding is reduced to the sum (or where two sums are mentioned, the highest sum) stated in such lower class, and that his rent is proportionally reduced.

Provided that no tenant of a holding valued at a yearly sum exceeding £10, and claiming under this section more than four years rent, and no tenant of a holding valued at a yearly sum not exceeding £10, and claiming as aforesaid more than five years rent, shall be entitled to make a separate or additional claim for improvements other than permanent buildings and reclamation of waste land.

Provided that—

- (1.) Out of any moneys payable to the tenant under this section all sums due to the landlord from the tenant or his predecessors in title in respect of rent, or in respect of any deterioration of a holding arising from non-observance on the part of the tenant of any express or implied covenant or agreement, may be deducted by the landlord, and also any taxes payable by the tenant due in respect of the holding, and not recoverable by him from the landlord;
- (2.) A tenant of a holding who at any time after the passing of this Act subdivides such holding, or sublets the same or any

part thereof, without the consent of the landlord in writing, or, after he has been prohibited in writing by the landlord or his agent from so doing, lets the same or any part thereof in conacre, save for the purpose of being solely used and which shall be solely used for the growing of potatoes or other green crops, the land being properly manured, shall not, nor shall any sub-tenant of or under any such tenant as last aforesaid, be entitled to any compensation under this section:

- (3.) A tenant of a holding under a lease made after the passing of this Act, and granted for a term certain of not less than thirty-one years, shall not be entitled to any compensation under this section, but he may claim compensation under section four of this Act.

The tenant of any holding valued under the Acts relating to the valuation of rateable property in Ireland at an annual value of not more than one hundred pounds, and held by him under a tenancy from year to year existing at the time of the passing of this Act, shall, if disturbed by the act of his immediate landlord, be entitled to compensation under and subject to the provisions of this section.

Any contract made by a tenant by virtue of which he is deprived of his right to make any claim which he would otherwise be entitled to make under this section shall, so far as relates to such claim, be void both at law and in equity; this provision shall be subject to the enactment contained in the section of this Act relating to the partial exemption of certain tenancies, and remain in force for twenty years from the first day of January one thousand eight hundred and seventy-one, and no longer, unless Parliament shall otherwise determine.

4. Any tenant of a holding who is not entitled to compensation under sections one and two of this Act, or either of such sections, or if entitled does not make any claim under the said sections, or either of them, may on quitting his holding, and subject to the provisions of section three of this Act, claim compensation to be paid by the landlord under this section in respect of all improvements on his holding made by him or his predecessors in title.

Provided that—

- (1.) A tenant shall not be entitled to any compensation in respect of any of the improvements following; that is to say,—
  - (a.) In respect of any improvement made before the passing of this Act, and twenty years before the claim of such compensation shall have been made, except permanent buildings and reclamation of waste land; or,

(b.) In respect of any improvement prohibited in writing by the landlord as being and appearing to the Court to be calculated to diminish the general value of the landlord's estate, and made within two years after the passing of this Act, or made during the unexpired residue of a lease granted before the passing of this Act; or,

(c.) In respect of any improvement made either before or after the passing of this Act in pursuance of a contract entered into for valuable consideration therefor; or,

(d.) (Subject to the rule in this section mentioned as to contracts) in respect of any improvement made, either before or after the passing of this Act, in contravention of a contract in writing not to make such improvement; or,

(e.) In respect of any improvement made either before or after the passing of this Act which the landlord has undertaken to make, except in cases where the landlord has failed to perform his undertaking within a reasonable time :

- (2.) A tenant of a holding under a lease or written contract made before the passing of this Act shall not be entitled on being disturbed by the act of the landlord in or on quitting his holding to any compensation in respect of any improvement, his right to which compensation is expressly excluded by such lease or contract :
- (3.) A tenant of a holding under a lease made either before or after the passing of this Act for a term certain of not less than thirty-one years, or in case of leases made before the passing of this Act for a term of a life or lives with or without a concurrent term of years, and which leases shall have existed for thirty-one years before the making of the claim, shall not be entitled to any compensation in respect of any improvement unless it is specially provided in the lease that he is entitled to such compensation, except permanent buildings and reclamation of waste land, and tillages or manures, the benefit of which tillages or manures is unexhausted at the time of the tenant quitting his holding :
- (4.) A tenant of a holding, who is quitting the same voluntarily, shall not be entitled to any compensation in respect of any improvement when it appears to the Court that such tenant has been given permission by his landlord to dispose of his interest in his improvements to an incoming tenant upon such terms as the Court may deem reasonable, and the tenant has refused or

neglected to avail himself of such permission :

- (5.) Out of any moneys payable to the tenant under this section all sums due to the landlord from the tenant or his predecessors in title in respect of rent, or in respect of any deterioration of the holding arising from non-observance on the part of the tenant of any express or implied covenant or agreement, may be deducted by the landlord, and also any taxes payable by the tenant due in respect of the holding and not recoverable by him from the landlord.

Any contract between a landlord and a tenant whereby the tenant is prohibited from making such improvements as may be required for the suitable occupation of his holding and its due cultivation shall be void both at law and in equity, but no improvement shall be deemed to be required for the suitable occupation of a tenant's holding and its due cultivation which appears to the Court to diminish the general value of the estate of the landlord, nor shall anything in this Act contained authorise or empower any tenant or occupier, without the previous consent in writing of the landlord, to break up or till any land or lands usually let, occupied, or used as grazing or grass lands, or let expressly as grazing or meadow land, or to cut timber without the consent of the landlord; provided that the tenant may cut timber planted and registered by him or his predecessors in title.

Any contract made by a tenant by virtue of which he is deprived of his right to make any claim which he would otherwise be entitled to make under this section shall, so far as relates to such claim, be void both at law and in equity, subject, however, to the enactment contained in the section of this Act relating to the partial exemption of certain tenancies, and to the provision in this section as to any improvement made in pursuance of a contract entered into for valuable consideration therefor.

Where a tenant has made any improvements before the passing of this Act on a holding held by him under a tenancy existing at the time of the passing thereof, the Court in awarding compensation to such tenant in respect of such improvements shall, in reduction of the claim of the tenant, take into consideration the time during which such tenant may have enjoyed the advantage of such improvements, also the rent at which such holding has been held, and any benefits which such tenant may have received from his landlord in consideration, expressly or impliedly, of the improvements so made.

5. For the purposes of compensation under this Act in respect of improvements on a holding which is not proved to be subject either to the

Ulster tenant-right custom or to such usage as aforesaid, or where the tenant does not seek compensation in respect of such custom or usage, all improvements on such holding shall, until the contrary is proved, be deemed to have been made by the tenant or his predecessors in title, except in the following cases where compensation is claimed in respect of improvements made before the passing of this Act :

- (1.) Where such improvements have been made previous to the time at which the holding in reference to which the claim is made was conveyed on actual sale to the landlord or those through whom he derives title :
- (2.) Where the tenant making the claim was tenant under a lease of the holding in reference to which the claim is made :
- (3.) Where such improvements were made twenty years or upwards before the passing of this Act :
- (4.) Where the holding upon which such improvements were made is valued under the Acts relating to the valuation of rateable property in Ireland at an annual value of more than one hundred pounds :
- (5.) Where the Court shall be of opinion that in consequence of its being proved to have been the practice on the holding, or the estate of which such holding forms part, for the landlord to make such improvements, such presumption ought not to be made :
- (6.) Where from the entire circumstances of the case the Court is reasonably satisfied that such improvements were not made by the tenant or his predecessors in title :

Provided always, that where it is proved to have been the practice on the holding, or the estate of which such holding forms part, for the landlord to assist in making such improvements, such presumption shall be modified accordingly.

6. Any landlord or tenant who may be desirous of preserving evidence of any improvements made by himself or by his predecessors in title before or after the passing of this Act may at any time (subject to the provisions herein-after contained) file a schedule in the Landed Estates Court specifying such improvements, and claiming the same as made by himself or his predecessors in title, and such schedule so filed shall be *prima facie* evidence that such improvements were made as therein mentioned : Provided always, that notice in writing of the intention to file such schedule, together with a copy thereof, shall be given by the landlord to the tenant for the time being of the holding on which such improvements shall have been made (or by the tenant to the landlord, as the case may be,) within the prescribed time before applying to the Landed

Estates Court to file the same ; and if the person receiving such notice shall dispute the claim made by such schedule, either wholly or in part, he shall be at liberty within the prescribed time and in the prescribed manner to apply to the Civil Bill Court to determine the matter in difference, and in such case such schedule shall not be filed unless or until leave shall have been given to file the same either in its original or in any amended form by the Civil Bill Court ; provided also, that before filing any such schedule proof shall be made in the Landed Estates Court by statutory declaration that the notice hereby required has been duly given, and that no application has been made within the prescribed time by the party receiving such notice to the Civil Bill Court, or (if any such application has been made) that leave has been given by the Civil Bill Court to file such schedule.

7. Where any tenant of a holding does not claim or has not obtained compensation under sections one, two, or three of this Act, and it is proved to the satisfaction of the Court that any such tenant or that his predecessors in title on coming into his holding paid money or gave money's worth with the express or implied consent of the landlord on account of his so coming into his holding, the Court shall award to such tenant on quitting his holding in respect of the sum so paid such compensation as it thinks just, having regard to the circumstances of the case ; but such tenant shall not be entitled to any compensation under this section when it appears to the Court that such tenant has been given permission by the landlord to obtain such satisfaction from an incoming tenant in respect of the money so paid, or the money's worth so given by him, and on such terms as the Court may think reasonable, and such tenant has refused or neglected to avail himself of such permission ; moreover where the money or money's worth paid or given by any tenant claiming compensation under this section on coming into his holding was paid or given in whole or in part in respect or as covering the value of any improvements on the holding, care shall be taken that such tenant shall not receive compensation in respect of the same improvements under this section and also under some other section of this Act ; provided that out of any moneys payable to the tenant under this section all sums due to the landlord from the tenant or his predecessors in title in respect of rent, or in respect of any deterioration of a holding arising from non-observance on the part of the tenant of any express or implied covenant or agreement, and also any taxes payable by the tenant due in respect of the holding, and not recoverable by him from the landlord, may, if not deducted under the provisions of section four of this Act, be deducted by or on

behalf of the landlord: Provided always, that this section shall not apply when such money or money's worth has been paid during the existence of a lease made before the passing of this Act.

8. Where a holding is proved to be subject to the Ulster tenant-right custom or such usage as aforesaid, and where the tenant claims under such custom or usage, and such custom or usage extends to away-going crops, the compensation payable in respect of away-going crops shall be dealt with according to the custom or usage, but the tenant of every other holding, which is not proved to be subject to the Ulster tenant-right custom or such usage as aforesaid, or in respect of which no claim is made under such custom or usage, shall, in the absence of any agreement in writing to the contrary, on quitting his holding, be entitled to all his away-going crops, or, at the option of the landlord, to be paid the value of the same.

9. For the purposes of this Act ejectment for nonpayment of rent, or for breach of any condition against assignment, sub-letting, bankruptcy, or insolvency, shall not be deemed disturbance of the tenant by act of the landlord; and for the purposes of this Act a person who is ejected for nonpayment of rent, or for breach of any such condition as aforesaid, and is not disturbed by act of the landlord within the meaning of this Act, shall stand in the same position in all respects as if he were quitting his holding voluntarily; provided that in the case of a person claiming compensation on the determination by ejectment for nonpayment of rent of a tenancy existing at the time of the passing of this Act, and continuing to exist without alteration of rent up to the time of such determination, the Court may, if it think fit, treat such ejectment as a disturbance if the arrear of rent in respect of which it is brought did not wholly accrue within the three previous years, and if any earlier arrear remained due from the tenant at the time of commencing the ejectment, or if, in case of any such tenancy of a holding held at an annual rent not exceeding fifteen pounds, the Court shall certify that the nonpayment of rent causing the eviction has arisen from the rent being an exorbitant rent; provided that no tenant who shall have given notice of surrender, and afterwards refuse to give up possession in pursuance of such notice, shall be entitled to any compensation under section three of this Act, though evicted by the landlord in a suit founded on such notice.

10. Any landlord may, after six months notice in writing to be served upon the tenant or left at his house, resume possession from a yearly tenant of so much land (not to exceed in the whole one twenty-fifth part of any individual holding) as he

may require for the bonâ fide purpose of erecting thereon one or more labourers cottages, with or without gardens attached, and such resumption of land shall not, unless the Court shall be of opinion that same was unreasonable, be deemed a disturbance of the tenant within the meaning of this Act, and shall not subject the landlord to any claim for compensation, except in respect of improvements, beyond an abatement of rent proportionate to the annual value of the land so taken by the landlord.

11. For the purposes of this Act a tenant shall be deemed to have derived his holding from the preceding tenant if he has paid to such preceding tenant any money or given to him any money's worth in respect of his holding, or has taken such holding by assignment or operation of law from the preceding tenant; and where a succession of tenants have derived title each from the other, the earlier in such succession shall be deemed to be the predecessor of the later, and the later in such succession shall be deemed to be the successor of the earlier.

12. A tenant of a holding which is not proved to be subject to the Ulster tenant-right custom or such other usage as aforesaid, whose holding, or the aggregate of whose holdings, in Ireland is valued under the Acts relating to the valuation of rateable property in Ireland at an annual value of not less than fifty pounds, shall not be entitled to make any claim for compensation under any provision of this Act, in cases where the tenant has contracted in writing with his landlord that he will not make any such claim.

13. Where the holding in respect of which compensation is claimed under section three of this Act is held under a tenancy from year to year existing at the time of the passing of this Act, and such tenancy is assigned without the consent of the landlord, and the landlord does not accept the assignee as his tenant, no compensation shall be payable by the landlord under the said section in any of the cases following:

- (1.) Where the rent of such holding is in arrear at the time of such assignment so as to render the tenant liable to eviction for nonpayment of rent, and such arrear is due by the tenant:
- (2.) Where such holding forms part of an estate upon which the assignment of holdings without the consent or approval of the landlord is contrary to or not warranted by the practice prevalent upon such estate:
- (3.) Where the Court shall be of opinion that the refusal of the landlord to accept such assignee as tenant is a reasonable refusal:

Provided always, that the transmission of a tenancy by bequest to the husband or wife, or to any one child or grandchild, or to any one brother or sister, or to any one child or grandchild of a brother or sister of the tenant, or the devolution of a tenancy by operation of law upon an intestacy or marriage, shall not be deemed an assignment within the meaning of this section.

14. Where it is proved to the Court that the tenant of any holding held under a tenancy from year to year existing at the time of the passing of this Act is evicted by the landlord by reason of the persistent exercise by such tenant of any right not necessary to the due cultivation of his holding, and from which such tenant is debarred by express or implied agreement with his landlord, such eviction shall not be deemed a disturbance of the tenant by the act of the landlord; or where the tenant of any holding so held as last aforesaid at the time of the passing of this Act is evicted by the landlord by reason of the tenant's unreasonable refusal to allow the landlord, or any person or persons authorised by him in that behalf, he or they making reasonable amends and satisfaction for any injury to be done or occasioned thereby, to enter upon the holding for any of the purposes following, that is to say,

Mining or taking minerals;

Quarrying or taking stone, marble, gravel, sand, or slate;

Cutting or taking timber or turf;

Opening or making roads, drains, and water-courses;

Viewing or examining the state of the holding and all buildings or improvements thereon;

Hunting, shooting, or fishing, or taking game or fish;

Such eviction shall not be deemed a disturbance of the tenant by the act of the landlord, unless it shall be shown that the landlord is persisting in such eviction after such refusal has been withdrawn by the tenant.

15. No compensation shall be payable under the preceding provisions of this Act in respect of—

- (1.) Any demesne land, or any holding ordinarily termed "townparks" adjoining or near to any city or town which shall bear an increased value as accommodation land over and above the ordinary letting value of land occupied as a farm, and shall be in the occupation of a person living in such city or town, or the suburbs thereof, or any holding let to be used wholly or mainly for the purpose of pasture, and valued under the Acts relating to the valuation of property in Ireland at an annual value of not less than fifty pounds, or any holding let to be used wholly or

mainly for the purposes of pasture the tenant of which does not actually reside on the same, unless such holding adjoins or is ordinarily used with the holding on which such tenant actually resides: Provided, that nothing herein contained shall prevent the tenant of any such holding making any claim which he otherwise would be entitled to make under sections four, five, and seven of this Act; or,

- (2.) Any holding which the tenant holds by reason of his being a hired labourer or hired servant; or,
- (3.) Any letting in conacre or for the purposes of agistment or for temporary depasturage; or,
- (4.) Any holding let and expressed in the document by which it is let to be so let for the temporary convenience or to meet a temporary necessity either of the landlord or tenant, and the letting of which has been determined by reason of the cause having ceased which gave rise to the letting;
- (5.) Any cottage allotment not exceeding a quarter of an acre.

#### *Proceedings in respect of Claims.*

16. Every tenant entitled under this Act to make any claim in respect of any right or for payment of any sums due to him by way of compensation, and about to quit his holding, may within the prescribed time serve a notice of such claim on his landlord, or in his absence his known agent; the notice shall be in writing in the prescribed form, and shall state the particulars of such claim, subject to such amendment as the Court may allow, together with the dates at which and the periods within which such particulars are severally alleged to have accrued, and, where such claim or any part of the same is in respect of compensation under the provisions of section three of this Act, the number of years rent claimed shall be specified.

17. On the receipt of the notice the landlord shall be deemed to have admitted the claim made by the tenant, unless within the prescribed time and in the prescribed manner he serves a notice on the tenant stating that he disputes the whole or some portion of the claim made by the latter, and upon service of such notice by a landlord on the tenant a dispute shall be deemed to have arisen between the landlord and the tenant as to the whole or a portion of such claim, and such dispute shall be decided by the Court, unless within the time and in the manner prescribed in that behalf such dispute shall have been settled by agreement between the landlord and tenant.



18. On the hearing of any dispute between landlord and tenant under this Act either party may make any claim, urge any objection to the claim of the other, or plead any set-off such party may think fit (including in the case of a landlord any moneys paid on account of the purchase of the right of the tenant under the Ulster tenant-right custom or such usage as aforesaid), and the Court shall take into consideration any such claim, objection, or set-off, also any such default or unreasonable conduct of either party as may appear to the Court to affect any matter in dispute between the parties, and shall admit, reduce, or disallow altogether any such claim, objection, or set-off made or pleaded on behalf of either party as the Court thinks just, giving judgment on the case with regard to all its circumstances, including such consideration of conduct as aforesaid, and the Court shall have jurisdiction at the hearing of any such dispute to ascertain what sums, if any, shall be deemed due by the tenant to the landlord under sections three, four, and seven of this Act, or any set-off in respect of unliquidated or liquidated damages under said sections, or any of them; and in any case in which compensation shall be claimed under section three of this Act, if it shall appear to the Court that the landlord has been and is willing to permit the tenant to continue in the occupation of his holding upon just and reasonable terms, and that such terms have been and are unreasonably refused by the tenant, the claim of the tenant to such compensation shall be disallowed.

19. In every case of dispute between landlord and tenant heard before the Civil Bill Court, the order of the Court shall be reduced into writing in the form of a decree or award (as the case may be), and shall state the items of claim allowed, that is to say, the particulars of loss sustained by the tenant in quitting his holding, and of the improvements and payment to his predecessor in title in respect to which compensation may have been awarded to the tenant under the third, fourth, and seventh sections, and also the particulars of any set-off, objection, default, or conduct allowed or taken into account; such decree or award to be made in the prescribed form.

20. Where in the case of any holding there are several persons standing in the relation to each other of landlord and tenant, and the circumstance of any one of such tenants quitting his holding by reason of disturbance or otherwise involves the interest of any of such persons other than the tenant quitting his holding, the Court shall determine the whole amount payable under this Act on the occasion of such tenant quitting his holding, and shall direct payment of the

same by such person, and to such one or more of the persons interested, and in such manner, as the Court thinks just; provided that this section shall not affect the Ulster tenant-right custom or such usage as aforesaid to which any holding is proved to be subject.

21. A tenant who may be decided by the Court to be entitled to compensation to be paid by any landlord shall not be compelled by process of law to quit his holding until the amount of compensation due to him has been paid or deposited in manner herein-after mentioned. A landlord shall in all cases have the option of depositing in the manner prescribed the amount of compensation due; and if at any time after the making of a claim for compensation as herein-before directed, and before finally giving up possession of his holding, a tenant shall be alleged to have done any damage to his holding, or the buildings thereon, the Court shall inquire into the same, and allow to the landlord out of the money so deposited such compensation as it may deem just, including mesne rates. In no case shall a tenant, except by special leave of the Court, be entitled to receive the money so deposited until he shall have given up possession of his holding. Where compensation is awarded in respect of any holding to be paid by any landlord who is himself a tenant of such holding, the tenant to whom such compensation is awarded shall not by reason of such compensation not being paid or deposited in manner aforesaid by such landlord be entitled under this section, as against a superior landlord not liable to such compensation, to retain possession of the holding after the expiration or determination of the title thereto of the landlord by whom such compensation was so awarded to be paid as aforesaid.

#### *Court to award Compensation.*

22. For the purposes of this part of this Act the Court shall mean one or other of the tribunals following; that is to say,

The Civil Bill Court of the county where the matter requiring the cognizance of the Court arises; or,

The Court of Arbitration constituted as in this Act mentioned.

Where a matter requiring the cognizance of the Court arises in respect of a holding situate within the jurisdiction of more than one Civil Bill Court, any Civil Bill Court within the jurisdiction of which any part of the holding is situate may take cognizance of the matter.

23. The judge of the Civil Bill Court (hereinafter called the chairman) shall in all cases brought before him under the provisions of this Act have power to take evidence upon oath, and to compel the attendance of witnesses, and shall

have all and the same powers, jurisdiction, and authority as in cases of Civil Bill ejectment coming within his jurisdiction as such judge: Provided always, that the judge shall himself without a jury decide any question of fact arising in any case brought before him under this Act.

The chairman may, with the consent of both parties, hear and determine any case brought before him under this Act in chamber, if he so thinks fit, and when so sitting in chamber he shall have all and the same powers, jurisdiction, and authority in respect to cases so heard as if sitting in open court.

The chairman may, within the prescribed time after making any order, review or rescind or vary any order previously made by him, but, save as aforesaid, and as provided by this Act with respect to appeal, every order of the Civil Bill Court shall be final.

Any order made by the chairman under this Act may be enforced by attachment or otherwise in the same manner as if it were the order of any of the superior courts of common law at Dublin, and if such order made by the chairman be for the payment of money, it may also be enforced in the same manner as civil bill decrees for money demands made by such chairman.

24. Any person aggrieved by any order of the chairman made under this Act may, within the prescribed time and in the prescribed manner, appeal therefrom in manner following; that is to say,

- (1.) Where such order has been made in the county or the county of the city of Dublin, to two judges of the superior courts of common law to be from time to time selected by the Court for Land Cases reserved:
- (2.) Where such order has been made elsewhere, to the judges of assize of the county in which such order has been made:

And every such appeal may be heard and determined by one of the said judges; but in case any question of law shall arise upon any such appeal, the judge before whom such question arises may, if he thinks fit, require that the same shall be heard and determined by both the said judges, and thereupon such question shall be heard and determined by both the said judges, who shall for such purpose sit together.

The judge or judges hearing such appeal may give judgment affirming, reversing, or modifying the order appealed from, and may finally decide thereon, and make such order as to costs in the Court below and of the appeal as may be agreeable to justice; and if the judge or judges alter or modify the order, such order so altered or modified, and signed by the judge or judges, shall be of the like effect as if it were the order of the Civil Bill Court. The judge or judges may also, in cases where he or they think it expe-

dient so to do, instead of making a final order, remit the case, with such directions as he or they may think fit, to the Court below.

The judges to whom any such appeal may be made may, where they deem it expedient, reserve any matter or question arising upon such appeal by way of case stated for the consideration of the Court for Land Cases reserved at Dublin.

The Court for Land Cases reserved at Dublin shall, for the purposes of this Act, be constituted in manner following; that is to say, the Lord Chancellor, the Master of the Rolls, the Lord Justice of Appeal, the Vice-Chancellor, and all the judges of the Common Law Courts shall be judges of the said Court for Land Cases reserved, and any five of such judges, the Lord Chancellor or Master of the Rolls, or Lord Justice of Appeal, or the Vice-Chancellor or one of the chief judges of the Common Law Courts being one, shall have power to hear and determine any matters that shall be brought before the said Court.

The officers of the Court of Exchequer Chamber shall act as officers of the Court for Land Cases reserved.

All cases referred to the Court for Land Cases reserved shall be prosecuted, heard, and determined by such Court in such manner and form and subject to such rules and regulations as the said Court may from time to time by rule direct.

The Court for Land Cases reserved shall give such judgment as ought to have been given in the Court below by the judges thereof, and such judgment shall be of the like effect as if it were the judgment of the said judges, or the Court of Land Cases reserved may remit the case, with such directions as they think fit, to the Court below.

25. Where the parties to any such dispute as aforesaid respecting any holding are desirous that such dispute should be settled by arbitration, they shall, in the prescribed manner and within the prescribed time, refer the same to an arbitrator or arbitrators, with an umpire to be appointed in manner appearing in the schedule annexed hereto, and the tribunal so selected shall be deemed in respect of such dispute the Court of Arbitration under this Act.

The Court of Arbitration shall, in all cases brought before it under this Act, have all and the like powers, jurisdiction, and authority as a Civil Bill Court under this Act, with this exception, that the Court of Arbitration shall have no power to punish persons for contempt, or to enforce its awards; but it may report to the Civil Bill Court the name of any person refusing to give evidence, or to produce documents, or guilty of contempt of the Court when sifting judicially; and the Civil Bill Court may, upon such report, punish the offender in the same manner as if the offence

had been committed in, or in respect of a matter under the cognizance of the Civil Bill Court.

The award of the Court of Arbitration may, at the instance of either party, be recorded in the prescribed manner and within the prescribed time in the Civil Bill Court, and when so recorded shall be enforceable as if the same were an order of said Court.

No such award shall, so far as relates to the dispute under this Act, be held to be invalid by reason of the violation of or non-compliance with any technical rule of law respecting awards, where such award substantially decides the dispute referred to the Court of Arbitration.

No appeal shall lie from an award of the Court of Arbitration, nor shall any such award be removable by certiorari.

*Powers of limited Owners.*

26. The expression "limited owner" shall in this Act mean as follows:

- (1.) Any person entitled under any existing or future settlement at law or in equity, for his own benefit and for the term of his own life, to the possession or receipt of the rents and profits of land, whether subject or not to incumbrances, in which the estate for the time being subject to the trusts of the settlement is an estate for lives or years renewable for ever, or is an estate renewable for a term of not less than sixty years, or is an estate for a term of years of which not less than sixty are unexpired, or is a greater estate than any of the foregoing estates:
- (2.) Any body corporate, any corporation sole, ecclesiastical or lay, any trustees for charities, and any commissioners or trustees for ecclesiastical, collegiate, or other public purposes, entitled at law or in equity, in the case of freehold land, to an estate in fee simple or in fee farm, and in the case of leasehold land to a lease for an unexpired residue of not less than thirty-one years, or for a term of years or of lives renewable for ever, or renewable for a period of not less than thirty-one years.

27. A landlord, being a limited owner, shall have power to agree with a tenant as to the amount of compensation payable to him under this Act, and on payment of the same to the tenant may apply to the Civil Bill Court for an order charging the holding with an annuity in respect of such payment; and the Court, upon being satisfied of such payment having been made, shall charge the holding with an annuity of five pounds for every one hundred pounds of the sum so paid to the tenant, and so on in proportion for any less sum, such annuity to be limited in favour of the limited owner, his exe-

cutors, administrators, and assigns, and to be payable for a term of thirty-five years on the anniversary of such date; provided that no such order shall be made by the Court unless notice of the application for the same shall have been given in the prescribed form to the person for the time being entitled to the first estate of inheritance, if any, expectant upon the determination of the estate of the limited owner, or if such person shall be a married woman, infant, or lunatic, to his or her husband, guardian, or committee respectively. Any annuity created under this section shall be a charge upon the holding having priority over all estates and interests subsequent to the estate or interest of the limited owner, but subject to any estates, mortgages, or other interests having priority over or charged on the estate of the limited owner.

28. Any limited owner shall have power to grant agricultural leases for any term of years absolute, or determinable at fixed periods, subject to the following restrictions:

- (1.) The term of any lease shall not exceed thirty-five years:
- (2.) The power of leasing conferred by this Act shall not include any mansion house or demesne lands:
- (3.) The lease shall take effect in possession, or within one year after the execution thereof, and not in reversion, and there shall be reserved thereby a fair yearly rent to be incidental to the immediate reversion of the holding, without taking anything in the nature of a fine, premium, or foregift; and in estimating such yearly rent it shall not be necessary to take into account against the tenant the increase (if any) in the value of the holding arising from any improvements executed by him or his predecessors in title:
- (4.) The lease shall imply a condition of re-entry for nonpayment of the rent thereby reserved:
- (5.) The lease, if it includes any building, shall contain a clause declaring whether the landlord or the tenant is bound to rebuild such building in the case of the same being destroyed during any part of the tenancy by fire, lightning, or tempest, and whether the landlord or the tenant is bound to keep the same in repair:
- (6.) The lessee shall execute a counterpart of every lease, and shall thereby covenant for the due payment of the rent reserved:

Upon the application of any landlord or tenant the Civil Bill Court may confirm any lease granted or proposed to be granted under this Act, and such Court may, if it thinks just, confirm or refuse to confirm such lease with or without modifications, and the confirmation of any

such lease shall be deemed conclusive evidence of the lease being within the powers of this Act; the confirmation of a lease shall be certified in the prescribed manner.

29. Any lease granted in pursuance of this Act by an individual limited owner shall be valid against the person granting the same, and against all persons entitled to any estate or interest subsequent to the estate or interest of such limited owner; and any lease granted in pursuance of this Act by any limited owner, being a body corporate, corporation sole, trustees for charities, commissioners or trustees for ecclesiastical, collegiate, or other public purposes, shall bind all the estate and interest of such last-mentioned limited owner; but no lease granted by an owner holding himself under a lease shall continue after the expiration of the term granted by such owner's lease.

30. All powers of leasing given by this Act shall be deemed to be in addition to any other powers any limited owner may possess, and such owner may exercise any other power of leasing vested in him in the same manner as if this Act were not passed.

31. The Court for Land Cases reserved, or any five of the judges of the said Court (the Lord Chancellor or Master of the Rolls, Lord Justice of Appeal or Vice-Chancellor, or one of the chief judges of the Common Law Courts being one), may from time to time make, and when made may rescind, annul, or add to, rules with respect to the following matters:—

- (1.) The proceedings in the Civil Bill Court and Court of Arbitration under this part of this Act:
- (2.) The proceedings in appeals under this part of this Act:
- (3.) The proceedings in Land Cases reserved under this part of this Act:
- (4.) The circulation of forms and directions as to the mode in which this part of this Act is to be carried into execution:
- (5.) The scale of costs and fees to be charged in carrying this part of this Act into execution, and the taxation of such costs and fees, and the persons by or from whom and the manner in which such costs and charges are to be paid or deducted, subject nevertheless to the sanction of the Treasury as to the amount of fees to be charged:
- (6.) The service of notices on incumbrancers and other persons interested, and any other matter by this part of this Act directed to be prescribed:
- (7.) As to any other matter or thing, whether similar or not to those above mentioned,

in respect of which it may be expedient to make rules for the purpose of carrying this part of this Act into effect.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

## PART II.

### *Sale of Land to Tenants.*

32. Subject to the restrictions herein-after mentioned, the landlord and tenant of any holding in Ireland may agree for the sale of the holding to the tenant at such price as may be fixed between them; and upon such agreement being made they may jointly, or either of them may separately with the assent of the other, apply to the Landed Estates Court, in this part of this Act referred to as "the Court," for the sale to the tenant of his holding.

33. No sale shall be made under this part of this Act unless the landlord is the absolute owner of the land which forms the holding of the tenant, or such tenant for life or other limited owner as is in this section mentioned.

"Absolute owner" shall in the case of freehold land mean the owner in fee simple or in fee farm, or person capable of appointing or disposing of the fee, whether subject or not to incumbrances, and in the case of leasehold land mean the owner or person capable of disposing of the whole interest in the lease under which the land is held, whether subject or not to incumbrances.

No holding of leasehold tenure shall be sold under this part of this Act unless the lease under which the landlord is possessed of the land which forms the holding is a lease for lives or years renewable for ever, or a lease for a term of years of which not less than sixty are unexpired at the time of the sale being made; and no sale shall be made under this part of this Act by a landlord being the owner of a leasehold under a lease containing a prohibition against alienation unless such prohibition has determined or is waived.

"Tenant for life" shall, for the purposes of this part of this Act, mean any person entitled under any existing or future settlement at law or in equity for his own benefit and for the term of his own life to the possession or receipt of the rents and profit of land, whether subject or not to incumbrances in which the estate for the time

being, subject to the trusts of the settlement, is an estate in fee simple or fee farm, or a lease of such duration as is in this section mentioned.

"Other limited owner" shall mean any body corporate, any trustees for charities, and any commissioners or trustees for collegiate or other public purposes, having an estate in fee simple or fee farm, or possessed of such leasehold as is in this section mentioned, whether subject or not to incumbrances.

34. The application shall be accompanied by a deposit of such sum (if any), to be deposited by the landlord by way of security for costs, as the Court may require. Upon the foregoing conditions being complied with the Court shall make such inquiries as to the circumstances of the holding in respect of which the application is made, and as to the parties interested therein, either as incumbrancers, owners, or otherwise, and as to the sufficiency of the price and of the capacity of the landlord to sell the same, as the Court may think fit, and if the Court approve of the application it shall carry such sale into effect accordingly, and execute the necessary conveyance to the tenant.

35. The conveyance by the Court under this part of this Act of a holding to a tenant shall in the case of freehold land confer on the tenant an estate in fee simple or fee farm, as the case may be, in such holding, together with all rights, privileges, and appurtenances enjoyed or reputed as belonging or appertaining thereto, subject to such charges and interests, if any, as are in this part of this Act declared not to be incumbrances, and in the case of estates in fee farm to the rents, covenants, and conditions expressed in the grant relating to the land of which the holding forms the whole or part, and on the part of the grantee, his heirs, executors, administrators, and assigns, to be paid, observed, and performed, but free from all other estates, incumbrances, and interests whatever, and shall in the case of leasehold land vest the holding in the tenant for the period, and subject to the rents, covenants, and conditions, expressed in the lease relating to the land of which the holding forms the whole or part, and on the part of the lessee, his executors, administrators, and assigns to be paid, observed, and performed, subject to such charges and interests, if any, as are in this part of this Act declared not to be incumbrances, but free from all other incumbrances and estates whatsoever.

36. The following charges and interests shall not be deemed incumbrances within the meaning of this part of this Act; that is to say,

- (1.) Quitrents and rentcharges in lieu of tithes:
- (2.) Rights of common, rights of way, watercourses, and rights of water and other easements;

(3.) Heriots, manorial rights of all descriptions, and franchises:

(4.) Charges for drainage, or other charges created under Act of Parliament, and to be specified in the conveyance.

And every holding sold under this part of this Act shall, unless the contrary is expressed, be deemed to be subject to such of the above charges and interests as may be for the time being subsisting thereon.

37. The Court shall determine the rights and priorities of the several persons entitled to or having charges upon or otherwise interested in any holding sold in pursuance of this Act, and shall distribute the purchase money in accordance with such rights and priorities.

Where any moneys arising from a sale under this part of this Act are not immediately distributable, or the parties entitled thereto cannot be ascertained, or where from any other cause the Court thinks it expedient for the protection of the rights of the parties interested, the Court may order the moneys to be lodged in Court or in the prescribed bank to the prescribed account, and may by its order declare the trusts affecting such moneys, so far as the Court has ascertained the same, or state the facts or matters found by it in relation to the rights and interests in such moneys; and the Court may from time to time make such orders in respect to any such moneys, and the investment or application thereof, or the payment thereof to the parties interested, as the circumstances of the case may require.

38. There shall be charged, in respect of any sale made in pursuance of this part of this Act, such per-centage fee on the price paid as the Treasury may prescribe, and the fees so charged shall be paid in to the receipt of Her Majesty's Exchequer, and carried to the account of the Consolidated Fund of the United Kingdom of Great Britain and Ireland.

39. Where any purchase moneys have been so lodged in Court or in the prescribed bank, provision shall be made in the prescribed manner with the sanction of the Treasury for the payment without cost to the persons entitled to any estate or interest in or having charges upon the holding so sold of any principal or interest moneys to which such persons may be entitled in respect of such estate and interest: Provided that any provision so made shall not extend to any expense caused by disputed titles, or any expense incurred by the failure of any person to comply with the rules for the time being in force relating to the distribution of such purchase moneys.

40. The Court shall have full power to apportion charges, rents, and covenants, and decide

all questions whatsoever, which it may be necessary to decide for the purposes of this Act, and shall not be subject to be restrained in the due execution of their powers under this Act by the order of any Court.

41. The Privy Council in Ireland may from time to time make, and when made may rescind, annul, or add to, rules with respect to the following matters :

- (1.) The proceedings to be had under this part of this Act :
- (2.) The circulation of forms and directions as to the mode in which this part of this Act is to be carried into execution :
- (3.) The scale of costs and fees to be charged in carrying this part of this Act into execution, and the taxation of such costs, and the persons by whom such costs and fees are to be paid, subject nevertheless to the sanction of the Treasury as to the amount of fees to be charged :
- (4.) The giving of notices to incumbrancers and other persons interested, and the service of such notices and any other matter by this part of this Act directed to be prescribed :
- (5.) As to any other matter or thing, whether similar or not to those above mentioned, in respect of which it may be expedient to make rules for the purpose of carrying this part of this Act into execution :

In framing rules under this section the Privy Council shall provide that notice of any sale to be made under this part of this Act shall be served upon every registered incumbrancer by sending it through the post in a prepaid letter addressed to such incumbrancer, and in proving service of any such notice it shall be sufficient to prove that such notice was properly directed to the incumbrancer at his last known place of abode, and that it was put as a prepaid letter into the post office.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

### PART III.

#### *Advances by and Powers of Board.*

42. Where any sums are due in respect of compensation under this Act from a landlord to

a tenant who is quitting his holding, but has not been disturbed by his landlord, the Commissioners of Public Works in Ireland, in this Act referred to as the Board, may, upon the application of such landlord, advance to the tenant on behalf of the landlord the whole or such portion of the sum so due as they may think expedient, and upon an order being made to that effect by the Civil Bill Court, and upon such advance being made by the Board, such holding shall be deemed to be charged with an annuity of five pounds for every one hundred pounds of such advance, and so in proportion for any less sum, such annuity to be limited in favour of the Board, and to be declared to be payable within a term of thirty-five years.

43. The Board may from time to time upon such security as they may approve advance such sums as they may think fit to any landlord in Ireland for the purpose of enabling him to reclaim waste lands ; and where any landlord has contracted for the sale of any waste land the Board may advance upon security jointly given by the vendor and purchaser such sums as they may think fit, not exceeding a moiety of the purchase money contracted to be paid ; and such waste land, and any other lands included in any such security, shall, upon an order being made to that effect by the Civil Bill Court, and upon such advance being made by the Board, be deemed to be charged with an annuity of five pounds for every one hundred pounds of such advance, and so in proportion for any less sum, such annuity to be limited in favour of the Board, and to be declared to be repayable within a period of thirty-five years.

44. The Board, if they are satisfied with the security, may advance to any tenant for the purpose of purchasing his holding in pursuance of this Act any sum not exceeding two thirds of the price of such holding, and upon an order being made by the Civil Bill Court to that effect, and upon such advance being made by the Board, such holding shall be deemed to be charged with an annuity of five pounds for every one hundred pounds of such advance, and so in proportion for any less sum, such annuity to be limited in favour of the Board, and to be declared to be repayable in the term of thirty-five years.

No purchaser, or person deriving title through him, of any holding to whom any advance has been made under this section shall, without the consent of the Board, alienate, assign, subdivide, or sublet his holding during such time as any part of the annuity charged on such holding remains unpaid, and any part of such holding alienated, assigned, subdivided, or sublet in contravention of this section shall be forfeited

to the Board, to be held by them for public purposes.

45. Where an absolute order for the sale of any estate has been made by the Landed Estates Court, and the tenant of any holding forming part of such estate is desirous to purchase such holding, he may apply to the Board in the prescribed manner to advance any sum not exceeding two thirds of the amount he may pay for the purchase of the same, and the Board may, subject to such conditions as to the price to be paid for such holding and to any matter relating to such purchase, as they think fit, agree with such tenant to make such advance.

When any such tenant has been declared the purchaser of a holding, and has paid one third or any greater part of the purchase money, the Board may pay the balance of such purchase money instead of such tenant, and upon such payment being made by the Board the Landed Estates Court shall by order declare such holding to be charged with an annuity of five pounds for every hundred pounds of such advance, and so in proportion for any less sum, such annuity to be limited in favour of the Board, and to be declared to be repayable in the term of thirty-five years.

Any holding charged by order of the Landed Estates Court in manner aforesaid shall not, without the consent of the Board, be alienated, assigned, subdivided, or sublet during such time as any part of the annuity charged on such holding remains unpaid, and any part of such holding alienated, assigned, subdivided, or sublet in contravention of this section shall be forfeited to the Board, to be held by them for public purposes.

46. The Landed Estates Court shall on the sale of estates by said Court, so far as is consistent with the interests of the persons interested in the estates or the purchase money thereof, afford, by the formation of lots for sale or otherwise, all reasonable facilities to occupying tenants desirous of purchasing their holdings under the provisions of this Act, and for that purpose shall hear any application in that behalf made by the Board or any such occupying tenant.

47. Where the landlord of an estate is willing to contract for the sale under the second part of this Act of his estate in its entirety but not in part, and the tenants of the holdings comprising four fifths in value of such estate are willing to purchase their holdings, and other purchasers can be found to buy the residue of such estate, and to pay one half of the purchase money payable in respect of such residue, such sale may be made accordingly under the second part of this Act in the same manner as if the whole of the

purchasers of the estate were tenants of the landlord, and the Board may advance to such other purchasers one half of their purchase money upon the security of the residue of the estate, and such advance may, at the discretion of the Board, be made to such purchasers collectively on the security of the whole of the residue of such estate, or to such purchasers severally on the security of the portions bought by them respectively, or partly in one way and partly in the other. Where any advance is made to purchasers or a purchaser under this section, the land bought by such purchaser or purchasers shall, on an order made to that effect by the Civil Bill Court, be charged with an annuity of five pounds for every one hundred pounds of such advance, and so in proportion for any less sum, such annuity to be limited in favour of the Board, and to be declared to be repayable within the term of thirty-five years.

48. Every annuity created in favour of the Board in pursuance of this Act shall be a charge on the land subject thereto having priority over all existing and future estates, interests, and incumbrances, with the exception of quitrents and other charges incident to the tenure, to rent-charges in lieu of tithes, and any charges created under any Act authorising advance of public money, or under any Act creating charges in respect of improvements on lands, and passed before this Act, with the exception also (in cases where the lands are subject to a fee-farm rent, or held under a lease reserving rent) of such fee-farm rent or rent reserved as aforesaid. The term during which every such annuity shall be payable shall be computed from the date of the advance in respect of which the same shall be charged, and every such annuity shall be payable in equal half-yearly payments on every first day of May and every first day of November during the said term of thirty-five years, with such apportionment, if any, as may be necessary in respect of the first and last of such payments.

49. Every annuity created in pursuance of this Act shall be recoverable by the Board or by or in the name of the Attorney General for Ireland in manner in which rentcharges in lieu of tithes are recoverable in Ireland; a certificate purporting to be under the hand of a member for the time being of the Board shall be evidence that the amount of any annuity or arrears of annuity stated therein to be due under this Act from any person named therein is due to the Board from such person.

50. No arrears of any annuity charged on land in pursuance of this Act shall be recoverable after the expiration of two years from the date at which the sum in arrear became due; and as

between owners having successive interests in any land so charged it shall be the duty of the owner for the time being in possession or in receipt of the rents and profits of such land to prevent such arrears arising, and if he make default in doing so, and the owner next entitled in possession pay any arrears caused by such default, the amount so paid shall be a debt due to the owner who has paid the same from the owner by whose default it became necessary to make such payment.

51. Where any land is charged with an annuity in favour of the Board, it shall be lawful for any person liable to pay such annuity to redeem the said annuity, or so much thereof as may at any time remain unexpired, by payment to the Board of a sum of money equivalent to the then value of the said annuity, such value to be calculated according to the table in the schedule annexed hereto.

52. Where any person is entitled to receive any principal moneys in pursuance of the sale of any holding made by them in pursuance of this Act, the Board may, on the application of such person, commute such principal moneys for the payment of an annuity of equivalent value, the value of money being reckoned at three pounds ten shillings per cent. per annum; and where any such person as aforesaid is entitled to the payment of a sum annually, the Board may commute the same for the payment of a principal sum of equivalent value, the value of money being reckoned at three pounds ten shillings per cent. per annum.

The Board may also, with the assent of the claimant, compromise by the payment of any principal or annual sum any postponed contingent or doubtful or other claim of any person to any share or interest in the purchase money arising from the sale of any holding under this Act.

53. The Board shall in making advances, in the mode of investing and dealing with the funds that come into their possession, and in the mode of accounting for the same, and generally in the performance of their duties under this Act, conform to any directions, whether given on special occasions or by general rule or otherwise, which may from time to time be given to them by the Treasury, and shall report within such time and in such manner as the Treasury may direct to the Treasury all matters which may be transacted by the Board.

54. There shall be issued to the Board for the purposes of this Act, at such times and in such sums and in such manner as the Treasury may determine, any sums of money not exceeding in the whole one million pounds, and the Treasury

may from time to time issue to the said Board the said sum of one million pounds out of the Consolidated Fund or the growing produce thereof.

55. All repayments to the Board of principal sums or by way of annuities in respect of advances made by them shall from time to time be paid back to the Consolidated Fund in such manner as the Treasury may direct.

56. The Civil Bill Court shall, on the application of any person entitled to an annuity by this Act directed to be charged by order of the Civil Court, make an order charging the same accordingly, and the clerk of the peace of the county in which such Court has jurisdiction shall keep an alphabetical registry in his office of all charging orders so made by the Court, and shall allow any person to inspect the same at all reasonable times on the payment of one shilling.

For the purpose of making charging orders in respect of any holding the Civil Bill Court of the county in which such holding or any part thereof is situate shall be deemed to have jurisdiction over such holding.

#### PART IV.

##### SUPPLEMENTAL PROVISIONS.

##### *As to Legal Proceedings and Court.*

57. There shall be paid in respect of every notice to quit to be served on a tenant of a holding as defined under this Act a duty of two shillings and sixpence, and such payment shall be denoted by a stamp on the notice.

58. No notice to quit shall be valid unless it is printed or written, or partly in print and partly in writing, and signed by the landlord or his agent lawfully authorised thereunto, nor unless such notice at the time of the service thereof is duly stamped with a stamp denoting the payment of a duty of two shillings and sixpence. A notice to quit shall not in the case of a tenant from year to year take effect until after the expiration of a period of not less than six calendar months from the date of the service of the notice, such period of six calendar months, in the absence of agreement to the contrary, to terminate on the last gale day of the calendar year. Any person serving on a tenant a notice to quit that is not in conformity with this section shall incur a penalty not exceeding forty shillings, to be recovered summarily under the provisions of the Petty Sessions (Ireland) Act, 1851.

In any proceedings between landlord and tenant, where the due service of a notice to quit has been proved, such notice to quit shall, until the



contrary is proved, be deemed to have been duly stamped.

59. The Civil Bill Court in any county on being satisfied that a tenant in such county has died, and that there is no legal personal representative of such tenant or no legal personal representative whose services are available for the purposes of this Act, may, if a legal representation of the tenant is required for the purposes of this Act, by order appoint such person as it thinks best entitled to be administrator of the deceased tenant limited to the purposes of this Act, and any such limited administrator shall for all the purposes of this Act represent the deceased tenant in the same manner as if the tenant had died intestate, and administration had been duly granted to such limited administrator of all the personal estate and effects of the tenant.

60. A married woman entitled to her separate use, and not restrained from anticipation, shall for the purposes of this Act be deemed a feme sole, but where any other married woman is desirous of making any application, giving any consent, or doing any act, or becoming party to any proceeding under this Act, in relation to any holding, her husband's concurrence shall be required, and she shall be examined by the Civil Bill Court of the county where she may for the time being be, or of the county where the holding is situate, apart from her husband touching her knowledge of the nature and effect of the application or other act, and it shall be ascertained that she is acting freely and voluntarily.

61. Where any person who (if not under disability) might have made any application, given any consent, done any act, or been party to any proceeding in relation to any holding under this Act, is a minor, idiot, or lunatic, the guardian or committee of the estate respectively of such person may make such applications, give such consents, do such acts, and be party to such proceedings, as such person respectively, if free from disability, might have made, given, done, or been party to, and shall otherwise represent such person for the purposes of this Act; where there is no guardian or committee of the estate of any such person as aforesaid, being infant, idiot, or lunatic, or where any person the committee of whose estate if he were idiot or lunatic would be authorised to act for and represent such person under this part of this Act is of unsound mind or incapable of managing his affairs, but has not been found idiot or lunatic under an inquisition, it shall be lawful for the Civil Bill Court of the county in which the holding is situate to appoint a guardian of such person for the purpose of any proceedings under this part of this Act, and from time to time to change such guardian; and where such Civil Bill Court sees fit it may appoint a person to act

as the next friend of a married woman for the purpose of any proceeding under this Act, and from time to time to remove or change such next friend.

62. For the purposes of carrying into effect the provisions of this Act the judges of Civil Bill Courts in Ireland shall, in addition to the Civil Bill Courts now by law directed, hold such Courts in such places within their respective jurisdictions as may be prescribed by the Privy Council in Ireland.

63. There shall be paid to the judges and officers of the Civil Bill Courts and to the officers of the Court of Exchequer Chamber in Ireland, by way of remuneration for the additional duties by this Act imposed upon them, such annual sums by way of additional salaries respectively as the Lord Lieutenant may direct and the Commissioners of Her Majesty's Treasury may approve, and all such sums shall be paid by the said Commissioners out of moneys to be provided by Parliament for that purpose.

64. In case it shall appear to the Lord Chancellor that from any reasonable cause the judge of any Civil Bill Court cannot conveniently hold the Courts prescribed under this Act, he may appoint any other judge of a Civil Bill Court to hold such Courts in his stead, and thereupon the judge so appointed shall hold such Courts as aforesaid, and shall for the purposes thereof have all and every the powers, authority, and jurisdiction of the judge in whose stead he shall have been appointed, and so long as he shall continue to act in his stead there shall be paid to him instead of to the said judge the additional salary payable to the said judge under this Act.

## PART V.

### *Miscellaneous.*

65. Any person who, under any tenancy whatsoever created after the passing of this Act, becomes the occupier of any premises liable to grand jury cess, and who is liable to pay a rent in respect of the same, may deduct from such rent, for each pound of the rent which he is liable to pay, one half of the sum which he has paid as grand jury cess in respect of each pound of the net annual value of such premises as valued under the Acts relating to the valuation of rateable property in Ireland, and so in proportion for any less sum than a pound: Provided always, that it shall not be lawful for any such person to deduct from the rent payable by him for such premises a larger sum than one half of the amount of the cess that has been paid by him in respect of the same.

Any person receiving rent in respect of any premises liable to grand jury cess, who also pays a rent in respect of the same, shall, if such rent is received and paid under contracts entered into after the passing of this Act, be entitled to deduct from the rent so paid by him a sum bearing such a proportion to the amount of the cess deducted from the rent received by him as the rent paid by him bears to the rent received by him.

66. Whenever the net annual value of the whole of the premises situate in any county of a city, county of a town, or barony, occupied by any person under any tenancy whatsoever created after the passing of this Act, does not exceed four pounds, as valued under the Acts relating to the valuation of rateable property in Ireland, and the same are liable to grand jury cess, then such cess shall, after the passing of this Act, be paid and payable by the immediate lessor or lessors of such person, and may be recovered from such immediate lessor or lessors in like manner as but for the provisions of this section it might have been recovered from the person occupying such premises.

If any such cess payable by any such immediate lessor be not paid within four months after the same has become due, the person duly authorised to collect the same may give notice in writing to the occupier for the time being of such premises to pay the cess due in respect of such premises, and after the expiration of one calendar month from the time of giving such notice it shall be lawful to recover such cess from such occupier, or in his default from any subsequent occupier of the premises, in like manner as if the same were cess due in respect of premises of a net annual value greater than four pounds.

And every such occupier so paying such cess may deduct from the rent he may be then or next thereafter liable to pay in respect of any such premises the whole of any such cess that he may have paid in respect of the same premises, and if rent sufficient to cover such cess be not then or do not thereafter become due from such occupier, he shall be entitled to recover the same from such immediate lessor by Civil Bill.

67. Nothing in the two next preceding sections of this Act contained shall apply to any county cess levied under the authority of any presentment made for the compensation of any person for any loss or damage occasioned by any malicious injury, or of any presentment made under the authority of section one hundred and six of the Act passed in the session of Parliament held in the sixth and seventh years of the reign of His late Majesty King William the Fourth, chapter one hundred and sixteen, or under the authority of "The Peace Preservation (Ireland) Act, 1870," or to any moneys levied as county cess by the

direction of the Lord Lieutenant of any district under the authority of "The Peace Preservation (Ireland) Act, 1856," or any Act or Acts amending or continuing the same now in force.

68. Any person who, after the passing of this Act, shall take at an acreable rent land adjoining or intersected by any public road or public roads, shall not, in the absence of an agreement to the contrary, be liable to rent for any portion of such land as may be contained in the public road or roads.

69. Where any tenancy at will, or less than a tenancy from year to year, is created by a landlord after the passing of this Act, the tenant under such tenancy shall on quitting his holding be entitled to notice to quit and compensation in the same manner in all respects as if he had been a tenant from year to year: Provided that this section shall not apply to any letting or contract for the letting of land made and entered into *bonâ fide* for the temporary convenience or to meet a temporary necessity either of the landlord or tenant.

#### *Definitions.*

70. In the construction of this Act the following words and expressions shall have the force and meaning hereby assigned to them, unless there be something in the subject or context repugnant thereto:

The term "person" or "party" shall extend to and include any body politic, corporate, or collegiate, whether aggregate or sole, and any public company:

The term "county" shall extend to and include county of a city, and county of a town, and a riding of a county, where such county of a city, county of a town, or riding of a county is appointed for civil bill purposes:

The term "prescribed" shall mean prescribed by any rules made in pursuance of this Act:

The term "lease" shall include an agreement for a lease:

The term "settlement" as used in this Act shall include any Act of Parliament, will, deed, or other assurance or connected set of assurances whereby particular estates or particular interests in land are created, with remainders or interests expectant thereon; and every estate and interest created by appointment made in exercise of any power contained in any settlement or derived from any settlement shall be considered as having been created by the same settlement; and an estate or interest by way of resulting use or trust to or for the settlor, or his heirs, executors, or administrators, shall be deemed

to be an estate or interest under the same settlement :

The term "landlord" in relation to a holding shall include a superior mesne or immediate landlord, or any person for the time being entitled to receive the rents and profits or to take possession of any holding :

The term "tenant" in relation to a holding shall mean any tenant from year to year and any tenant for a life or lives or for a term of years under a lease or contract for a lease, whether the interest of such tenant has been acquired by original contract, lawful assignment, devise, bequest, or act and operation of law ; and where the tenancy of any person having been a tenant under a tenancy which does not disentitle him to compensation under this Act is determined or expiring, he shall, notwithstanding such determination or expiration, be deemed to be a tenant until the compensation, if any, due to him under this Act has been paid or deposited as in this Act provided :

The term "improvements" shall mean in relation to a holding,—

- (1.) Any work which being executed adds to the letting value of the holding on which it is executed, and is suitable to such holding ; also,
- (2.) Tillages, manures, or other like farming works, the benefit of which is unexhausted at the time of the tenant quitting his holding.

71. This Act shall not apply to any holding which is not agricultural or pastoral in its character, or partly agricultural and partly pastoral ; and the term "holding" shall include all land of the above character held by the same tenant of the same landlord for the same term and under the same contract of tenancy.

72. This Act may be cited for all purposes as "The Landlord and Tenant (Ireland) Act, 1870."

73. This Act shall apply to Ireland only.

#### —o—o—o— SCHEDULE.

##### *Arbitrations.*

(1.) If both parties concur a single arbitrator may be appointed.

(2.) If the single arbitrator dies or becomes incapable to act before he has made his award, the matters referred to him shall be determined by arbitration under the provisions of this Act in the same manner as if no appointment of an arbitrator had taken place.

(3.) If both parties do not concur in the appointment of a single arbitrator, each party on the request of the other party shall appoint an arbitrator.

(4.) An arbitrator shall in all cases be appointed in writing, and the delivery of an appointment to an arbitrator shall be deemed a submission to arbitration on the part of the party by whom the same is made, and after any such appointment has been made neither party shall have power to revoke the same without the consent of the other.

(5.) If for the space of fourteen days after the service by one party on the other of a request made in writing to appoint an arbitrator such last-mentioned party fails to appoint an arbitrator, then upon such failure the party making the request may apply to the Court, and thereupon the dispute shall be decided by the Court according to the provisions of this Act.

(6.) If any arbitrator appointed by either party dies or becomes incapable to act before an award

has been made, the party by whom such arbitrator was appointed may appoint some other person to act in his place, and if for the space of fourteen days after notice in writing from the other party for that purpose he fails to do so the remaining or other arbitrator may proceed *ex parte*.

(7.) If where more than one arbitrator has been appointed either of the arbitrators refuses or for fourteen days neglects to act, the other arbitrator may proceed *ex parte*, and the decision of such arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

(8.) If, where more than one arbitrator has been appointed, and where neither of them refuses or neglects to act as aforesaid, such arbitrators fail to make their award within twenty-one days after the day on which the last of such arbitrators was appointed, or within such extended time (if any) as may have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as hereafter mentioned.

(9.) Where more than one arbitrator has been appointed, the arbitrators shall, before they enter upon the matters referred to them, appoint by writing under their hands an umpire to decide on any matters on which they may differ.

(10.) If the umpire dies or becomes incapable to act before he has made his award, or refuses

to make his award within a reasonable time after the matter has been brought within his cognizance, the arbitrators shall forthwith after such death, incapacity, or refusal appoint another umpire in his place.

(11.) If in any of the cases aforesaid the said arbitrators refuse, or for fourteen days after

request of either party to such arbitration neglect, to appoint an umpire, the Civil Bill Court, as defined by this Act, shall, on the application of either party to such arbitration, appoint an umpire.

(12.) The decision of every umpire on the matters referred to him shall be final.

*Table for Redemption of Annuities or Rentcharges.*

Term unexpired.	Redemption money to be paid in respect of each 10l. of annuity.*	Term unexpired.	Redemption money to be paid in respect of each 10l. of annuity.*
	£ s. d.		£ s. d.
1	9 14 10	19	137 18 8
2	19 3 1	20	142 19 5
3	28 4 11	21	147 16 9
4	37 0 6	22	152 10 10
5	45 10 1	23	157 1 8
6	53 13 11	24	161 9 5
7	61 12 2	25	165 14 1
8	69 5 1	26	169 16 0
9	76 12 8	27	173 15 0
10	83 15 3	28	177 11 5
11	90 13 0	29	181 5 2
12	97 6 1	30	184 16 5
13	103 14 7	31	188 5 3
14	109 18 8	32	191 11 8
15	115 18 7	33	194 15 11
16	121 14 5	34	197 17 11
17	127 6 3	35	200 17 10
18	132 14 3		

*Note.*—This table is calculated on the assumption of the original purchase money being repaid in 35 years with interest at 3½ per cent. payable half-yearly.

\* Where the unexpired term includes part of a year such addition, if any, as may be necessary shall be made to the redemption money in respect of such part of a year.

## CHAP. 47.

### *Dividends and Stock Act, 1870.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Extension to Ireland of 32 & 33 Vict. c. 104.*
3. *Amendment of 32 & 33 Vict. c. 104: s. 5.*

An Act for extending to Ireland and amending "The Dividends and Stock Act, 1869." (1st August 1870.)

WHEREAS by the Dividends and Stock Act, 1869, facilities were given for the payment by

warrants through the post of dividends on the public stocks transferable in the books of the Governor and Company of the Bank of England, and other regulations were made respecting such dividends, and it is expedient to extend the provisions of the said Act to the dividends on

the public stocks transferable in the books of the Governor and Company of the Bank of Ireland, and otherwise to amend the said Act:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Dividends and Stock Act, 1870.

2. The Dividends and Stock Act, 1869, shall apply to all stock forming part of the National Debt and transferable in the books of the Governor and Company of the Bank of Ireland in the same manner as if the provisions thereof were enacted in this Act, and the Governor and Company of the Bank of Ireland were substituted in those provisions for the Governor and Company of the Bank of England; and when the Dividends and Stock Act, 1869, has taken effect by virtue of this Act in relation to all stock transferable in the books of the Governor and Company of the Bank of Ireland then on the

fifth day of January one thousand eight hundred and seventy-one there shall be deemed to have accrued due and to have become payable on the new five pounds per centum annuities standing on that day in those books one equal half part of one half year's dividend; and the same shall be accordingly paid on that day to the then holders of those annuities; and thenceforth the dividends on all new five pounds per centum annuities for the time being transferable in the books of the Governor and Company of the Bank of Ireland shall be payable and paid on the same half-yearly days, and in the same manner in all respects as dividends are payable and paid on like annuities for the time being transferable in the books of the Governor and Company of the Bank of England.

3. The Dividends and Stock Act, 1869, and this Act shall each be construed as if the Comptroller and Auditor General were mentioned in the Dividends and Stock Act, 1869, instead of the commissioners for auditing the public accounts.

#### CHAP. 48.

#### *Paupers Conveyance (Expenses) Act, 1870.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Poor Law Board to define cases in which guardians may pay expense of conveying paupers.*
2. *Short title and interpretation.*

An Act for removing doubts respecting the payment of Expenses incurred in the Conveyance of Paupers in certain cases not expressly provided for by Law.  
(9th August 1870.)

WHEREAS doubts are entertained whether boards of guardians may in certain cases lawfully pay the expenses incurred in conveying persons chargeable to their union or parish to any other part of England, and it is expedient that provision should be made for removing such doubts:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the

authority of the same, as follows; (that is to say.)

1. The Poor Law Board may, by order, define and direct in what cases (other than those expressly provided for by law), and under what regulations, the guardians of any union or parish may pay the reasonable expenses incurred by them in conveying any person chargeable to such union or parish from one place to another in England, and may charge such expenses upon the common fund of the union or other like fund under their control.

2. This Act may be cited as the Paupers Conveyance (Expenses) Act, 1870, and shall be construed in like manner as the Poor Law Amendment Act, 1834, and the subsequent Acts amending or explaining the same.

## CHAP. 49.

*The Evidence Amendment Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Interpretation of "court of justice" and "presiding judge" in recited Act.*
2. *Short title.*
3. *Not to extend to Scotland.*

An Act to explain and amend "the Evidence Further Amendment Act, 1869." (9th August 1870.)

WHEREAS it was enacted by the "Evidence Further Amendment Act, 1869," section 4, as follows :

"If any person called to give evidence in any court of justice, whether in a civil or criminal proceeding, shall object to take an oath, or shall be objected to as incompetent to take an oath, such person shall, if the presiding judge is satisfied that the taking of an oath would have no binding effect on his conscience, make the following promise and declaration :

"I solemnly promise and declare, that the 'evidence given by me to the court shall be the 'truth, the whole truth, and nothing but the 'truth.'

"And any person who, having made such promise and declaration, shall wilfully and corruptly give false evidence, shall be liable to be

indicted, tried, and convicted for perjury as if he had taken an oath :"

And whereas doubts have arisen as to the extent and meaning of the words "court of justice" and "presiding judge" in the said section :

Be it enacted by the Queen's, most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The words "court of justice," and the words "presiding judge," in section 4 of the said Evidence Further Amendment Act, 1869, shall be deemed to include any person or persons having by law authority to administer an oath for the taking of evidence.

2. This Act may be cited for all purposes as "The Evidence Amendment Act, 1870."

3. This Act shall not extend to Scotland.

## CHAP. 50.

*Shipping Dues Exemption Act, 1867, Amendment.*

## ABSTRACT OF THE ENACTMENTS.

1. *Agreements for compensation made but not sent in to the Board of Trade within the time prescribed by recited Act may be approved by Board of Trade.*
2. *Construction of Act.*
3. *32 & 33 Vict. c. 52. repealed.*

An Act to amend "The Shipping Dues Exemption Act, 1867." (9th August 1870.)

WHEREAS by "The Shipping Dues Exemption Act, 1867," provision is made for the abolition of certain exemptions from local dues on shipping and on goods carried in ships, and for payment of compensation for such abolition :

And whereas the said Act contains the following provision ; that is to say,

"With respect to determining the amount of " compensation to be paid under this Act the " following rules shall be observed :

"(1.) The claimant shall send to the receiver " of dues, and to the Board of Trade, in " writing, his claim to compensation, " stating the amount and grounds of his " claim, and shall give such evidence in

" support of his claim as the Board of Trade may require:

- " (2.) This claim shall be sent in to the Board of Trade within three months after the commencement of this Act, and if it is not sent in within that time the claimant shall not be entitled to any compensation in respect of the time prior to the date of the receipt of such claim by the Board of Trade; and if it is not sent in within one year after the passing of this Act the claimant shall not be entitled to any compensation:
- " (3.) As soon as may be after receiving such claim, the receiver of dues shall agree with the claimant on the amount of the compensation to be paid, and the times and mode of such payment, but such agreement shall be subject to the approval of the Board of Trade."

And whereas in certain cases claims for compensation have been sent to the receiver of dues, and agreements for compensation have been made between the claimant and such receiver, but through inadvertence such claims have not been sent in to the Board of Trade within the time prescribed by the said recited Act; and it is expedient to extend the time for sending in and approving such claims :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. In any case in which any claim has been allowed by or any agreement for compensation has been made with the receiver of dues under "The Shipping Dues Exemption Act, 1867," but has not been sent in to the Board of Trade within the time prescribed by the said Act, the Board of Trade, if satisfied that the omission to send in the same to them has arisen from inadvertence, may at any time within six months from the date of this Act approve the same, and compensation shall thereupon be paid according to the terms of such claim or agreement, as if the same had been duly sent to the Board of Trade within the time prescribed by the said Act and approved in accordance with the provisions thereof.

2. This Act shall be construed with and as part of "The Shipping Dues Exemption Act, 1867."

3. "The Shipping Dues Exemption Act Amendment Act, 1869," shall be repealed.

#### CHAP. 51.

#### *The Notice Act (Isle of Man) Repeal Act, 1870.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *7 W. 4. and 1 Vict. c. 45. so far as respects the Isle of Man repealed.*

An Act to repeal an Act intituled "An Act to alter the mode of giving Notices for the holding of Vestries, of making Proclamation in cases of Outlawry, and of giving Notices on Sundays in respect to various matters," so far as such Act relates to the Isle of Man.

(9th August 1870.)

WHEREAS by an Act passed in the first year of Her present Majesty's reign, chapter forty-five, and intituled "An Act to alter the mode of giving notices for the holding of vestries, and of making proclamations in cases of outlawry, and of giving notices on Sundays with respect

"to various matters," certain provisions were made as to the mode of giving notices in lieu of any other existing mode of giving notices on Sundays during or after divine service in churches or chapels, whether under or by virtue of any law or statute or by custom or otherwise :

And whereas such Act is declared by the sixth section thereof to apply to the Isle of Man :

And whereas the provisions of the said Act have not been observed in the Isle of Man by reason of the inhabitants of that island having been ignorant that the said Act applied thereto, and in consequence it is apprehended that divers notices given in the said island, and acts and things done in pursuance of such notices, are invalid :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of

the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as "The Notice Act (Isle of Man) Repeal Act, 1870."

2. The said Act passed in the first year of Her present Majesty's reign, chapter forty-five, is hereby repealed, so far as respects the Isle of

Man, and shall be deemed never to have applied to or to have been in force in the said island, except in so far as may be necessary for giving validity to any notice given or any act or thing done in the said island in pursuance of the said Act, and all notices given and acts and things done in the said island which would have been valid if the said Act had not applied to or been in force in the said island shall be valid accordingly.

## CHAP. 52.

### *The Extradition Act, 1870.*

#### ABSTRACT OF THE ENACTMENTS.

##### *Preliminary.*

1. *Short title.*
2. *Where arrangement for surrender of criminals made, Order in Council to apply Act.*
3. *Restrictions on surrender of criminals.*
4. *Provisions of arrangement for surrender.*
5. *Publication and effect of order.*
6. *Liability of criminal to surrender.*
7. *Order of Secretary of State for issue of warrant in United Kingdom if crime is not of a political character.*
8. *Issue of warrant by police magistrate, justice, &c.*
9. *Hearing of case and evidence of political character of crime.*
10. *Committal or discharge of prisoner.*
11. *Surrender of fugitive to foreign state by warrant of Secretary of State.*
12. *Discharge of persons apprehended if not conveyed out of United Kingdom within two months.*
13. *Execution of warrant of police magistrate.*
14. *Depositions to be evidence.*
15. *Authentication of depositions and warrants.*

##### *Crimes committed at sea.*

16. *Jurisdiction as to crimes committed at sea.*

##### *Fugitive criminals in British Possessions.*

17. *Proceedings as to fugitive criminals in British possessions.*
18. *Saving of laws of British possessions.*

##### *General Provisions.*

19. *Criminal surrendered by foreign state not triable for previous crime.*
20. *As to use of forms in second schedule.*
21. *Revocation, &c. of Order in Council.*
22. *Application of Act in Channel Islands and Isle of Man.*
23. *Saving for Indian treaties.*
24. *Power of foreign state to obtain evidence in United Kingdom.*
25. *Foreign state includes dependencies.*
26. *Definition of terms.*

##### *Repeal of Acts.*

27. *Repeal of Acts in third schedule.*  
*Schedules.*



**An Act for amending the Law relating  
to the Extradition of Criminals.**  
(9th August 1870.)

WHEREAS it is expedient to amend the law relating to the surrender to foreign states of persons accused or convicted of the commission of certain crimes within the jurisdiction of such states, and to the trial of criminals surrendered by foreign states to this country:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

*Preliminary.*

1. This Act may be cited as "The Extradition Act, 1870."

2. Where an arrangement has been made with any foreign state with respect to the surrender to such state of any fugitive criminals, Her Majesty may, by Order in Council, direct that this Act shall apply in the case of such foreign state.

Her Majesty may, by the same or any subsequent order, limit the operation of the order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient.

Every such order shall recite or embody the terms of the arrangement, and shall not remain in force for any longer period than the arrangement.

Every such order shall be laid before both Houses of Parliament within six weeks after it is made, or, if Parliament be not then sitting, within six weeks after the then next meeting of Parliament, and shall also be published in the London Gazette.

3. The following restrictions shall be observed with respect to the surrender of fugitive criminals:

(1.) A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the police magistrate or the court before whom he is brought on Habeas corpus, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character:

(2.) A fugitive criminal shall not be surrendered to a foreign state unless provision is made by the law of that state, or by

arrangement, that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be detained or tried in that foreign state for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded:

(3.) A fugitive criminal who has been accused of some offence within English jurisdiction not being the offence for which his surrender is asked, or is undergoing sentence under any conviction in the United Kingdom, shall not be surrendered until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise:

(4.) A fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

4. An Order in Council for applying this Act in the case of any foreign state shall not be made unless the arrangement—

(1.) provides for the determination of it by either party to it after the expiration of a notice not exceeding one year; and,

(2.) is in conformity with the provisions of this Act, and in particular with the restrictions on the surrender of fugitive criminals contained in this Act.

5. When an order applying this Act in the case of any foreign state has been published in the London Gazette, this Act (after the date specified in the order, or if no date is specified, after the date of the publication,) shall, so long as the order remains in force, but subject to the limitations, restrictions, conditions, exceptions, and qualifications, if any, contained in the order, apply in the case of such foreign state. An Order in Council shall be conclusive evidence that the arrangement therein referred to complies with the requisitions of this Act, and that this Act applies in the case of the foreign state mentioned in the order, and the validity of such order shall not be questioned in any legal proceedings whatever.

6. Where this Act applies in the case of any foreign state, every fugitive criminal of that state who is in or suspected of being in any part of Her Majesty's dominions, or that part which is specified in the order applying this Act (as the case may be), shall be liable to be apprehended and surrendered in manner provided by this Act, whether the crime in respect of which the surrender is sought was committed before or after the date of the order, and whether there is or is not any concurrent jurisdiction in any court of Her Majesty's dominions over that crime.

7. A requisition for the surrender of a fugitive criminal of any foreign state, who is in or suspected of being in the United Kingdom, shall be made to a Secretary of State by some person recognised by the Secretary of State as a diplomatic representative of that foreign state. A Secretary of State may, by order under his hand and seal, signify to a police magistrate that such requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal.

If the Secretary of State is of opinion that the offence is one of a political character, he may, if he think fit, refuse to send any such order, and may also at any time order a fugitive criminal accused or convicted of such offence to be discharged from custody.

8. A warrant for the apprehension of a fugitive criminal, whether accused or convicted of crime, who is in or suspected of being in the United Kingdom, may be issued—

1. by a police magistrate on the receipt of the said order of the Secretary of State, and on such evidence as would in his opinion justify the issue of the warrant if the crime had been committed or the criminal convicted in England; and
2. by a police magistrate or any justice of the peace in any part of the United Kingdom, on such information or complaint and such evidence or after such proceedings as would in the opinion of the person issuing the warrant justify the issue of a warrant if the crime had been committed or the criminal convicted in that part of the United Kingdom in which he exercises jurisdiction.

Any person issuing a warrant under this section without an order from a Secretary of State shall forthwith send a report of the fact of such issue, together with the evidence and information or complaint, or certified copies thereof, to a Secretary of State, who may if he think fit order the warrant to be cancelled, and the person who has been apprehended on the warrant to be discharged.

A fugitive criminal, when apprehended on a warrant issued without the order of a Secretary of State, shall be brought before some person having power to issue a warrant under this section, who shall by warrant order him to be brought and the prisoner shall accordingly be brought before a police magistrate.

A fugitive criminal apprehended on a warrant issued without the order of a Secretary of State shall be discharged by the police magistrate, unless the police magistrate within such reasonable time as, with reference to the circumstances of the case, he may fix, receives from a Secretary

of State an order signifying that a requisition has been made for the surrender of such criminal.

9. When a fugitive criminal is brought before the police magistrate, the police magistrate shall hear the case in the same manner, and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him charged with an indictable offence committed in England.

The police magistrate shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted is an offence of a political character or is not an extradition crime.

10. In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorising the arrest of such criminal is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, prove that the prisoner was convicted of such crime, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

If he commits such criminal to prison, he shall commit him to the Middlesex House of Detention, or to some other prison in Middlesex, there to await the warrant of a Secretary of State for his surrender, and shall forthwith send to a Secretary of State a certificate of the committal, and such report upon the case as he may think fit.

11. If the police magistrate commits a fugitive criminal to prison, he shall inform such criminal that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of Habeas corpus.

Upon the expiration of the said fifteen days, or, if a writ of Habeas corpus is issued, after the decision of the court upon the return to the writ, as the case may be, or after such further period as may be allowed in either case by a Secretary of State, it shall be lawful for a Secretary of State, by warrant under his hand and seal, to order the fugitive criminal (if not delivered on the decision of the court) to be surrendered to such person as may in his opinion be duly authorised to receive the fugitive criminal by the foreign state from which the requisition for the surrender proceeded, and such fugitive criminal shall be surrendered accordingly.

It shall be lawful for any person to whom such warrant is directed and for the person so authorised as aforesaid to receive, hold in custody, and convey within the jurisdiction of such foreign state the criminal mentioned in the warrant; and if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape.

12. If the fugitive criminal who has been committed to prison is not surrendered and conveyed out of the United Kingdom within two months after such committal, or, if a writ of Habeas corpus is issued, after the decision of the court upon the return to the writ, it shall be lawful for any judge of one of Her Majesty's Superior Courts at Westminster, upon application made to him by or on behalf of the criminal, and upon proof that reasonable notice of the intention to make such application has been given to a Secretary of State, to order the criminal to be discharged out of custody, unless sufficient cause is shown to the contrary.

13. The warrant of the police magistrate issued in pursuance of this Act may be executed in any part of the United Kingdom in the same manner as if the same had been originally issued or subsequently indorsed by a justice of the peace having jurisdiction in the place where the same is executed.

14. Depositions or statements on oath, taken in a foreign state, and copies of such original depositions or statements, and foreign certificates of or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence in proceedings under this Act.

15. Foreign warrants and depositions or statements on oath, and copies thereof, and certificates of or judicial documents stating the fact of a conviction, shall be deemed duly authenticated for the purposes of this Act if authenticated in manner provided for the time being by law or authenticated as follows:

- (1.) If the warrant purports to be signed by a judge, magistrate, or officer of the foreign state where the same was issued;
- (2.) If the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate, or officer of the foreign state where the same were taken to be the original depositions or statements, or to be true copies thereof, as the case may require; and
- (3.) If the certificate of or judicial document stating the fact of conviction purports to

be certified by a judge, magistrate, or officer of the foreign state where the conviction took place; and

if in every case the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of the minister of justice, or some other minister of state: And all courts of justice, justices, and magistrates shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof.

#### *Crimes committed at sea.*

16. Where the crime in respect of which the surrender of a fugitive criminal is sought was committed on board any vessel on the high seas which comes into any port of the United Kingdom, the following provisions shall have effect:

1. This Act shall be construed as if any stipendiary magistrate in England or Ireland, and any sheriff or sheriff substitute in Scotland, were substituted for the police magistrate throughout this Act, except the part relating to the execution of the warrant of the police magistrate:
2. The criminal may be committed to any prison to which the person committing him has power to commit persons accused of the like crime:
3. If the fugitive criminal is apprehended on a warrant issued without the order of a Secretary of State, he shall be brought before the stipendiary magistrate, sheriff, or sheriff substitute who issued the warrant, or who has jurisdiction in the port where the vessel lies, or in the place nearest to that port.

#### *Fugitive criminals in British Possessions.*

17. this Act, when applied by Order in Council, shall, unless it is otherwise provided by such order, extend to every British possession in the same manner as if throughout this Act the British possession were substituted for the United Kingdom or England, as the case may require, but with the following modifications; namely,

- (1.) The requisition for the surrender of a fugitive criminal who is in or suspected of being in a British possession may be made to the governor of that British possession by any person recognised by that governor as a consul general, consul, or vice-consul, or (if the fugitive criminal has escaped from a colony or dependency of the foreign state on behalf of which the requisition is made) as the governor of such colony or dependency:
- (2.) No warrant of a Secretary of State shall be required, and all powers vested in or

acts authorised or required to be done under this Act by the police magistrate and the Secretary of State, or either of them, in relation to the surrender of a fugitive criminal, may be done by the governor of the British possession alone :

- (3.) Any prison in the British possession may be substituted for a prison in Middlesex :
- (4.) A judge of any court exercising in the British possession the like powers as the Court of Queen's Bench exercises in England may exercise the power of discharging a criminal when not conveyed within two months out of such British possession.

18. If by any law or ordinance, made before or after the passing of this Act by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying this Act in the case of any foreign state, or by any subsequent order, either

suspend the operation within any such British possession of this Act, or of any part thereof, so far as it relates to such foreign state, and so long as such law or ordinance continues in force there, and no longer ;

or direct that such law or ordinance, or any part thereof, shall have effect in such British possession, with or without modifications and alterations, as if it were part of this Act.

#### *General Provisions.*

19. Where, in pursuance of any arrangement with a foreign state, any person accused or convicted of any crime which, if committed in England, would be one of the crimes described in the first schedule to this Act is surrendered by that foreign state, such person shall not, until he has been restored or had an opportunity of returning to such foreign state, be triable or tried for any offence committed prior to the surrender in any part of Her Majesty's dominions other than such of the said crimes as may be proved by the facts on which the surrender is grounded.

20. The forms set forth in the second schedule to this Act, or forms as near thereto as circumstances admit, may be used in all matters to which such forms refer, and in the case of a British possession may be so used, *mutatis mutandis*, and when used shall be deemed to be valid and sufficient in law.

21. Her Majesty may, by Order in Council, revoke or alter, subject to the restrictions of this Act, any Order in Council made in pursuance of this Act, and all the provisions of this Act with respect to the original order shall (so far as appli-

cable) apply, *mutatis mutandis*, to any such new order.

22. This Act (except so far as relates to the execution of warrants in the Channel Islands) shall extend to the Channel Islands and Isle of Man in the same manner as if they were part of the United Kingdom; and the royal courts of the Channel Islands are hereby respectively authorised and required to register this Act.

23. Nothing in this Act shall affect the lawful powers of Her Majesty or of the Governor General of India in Council to make treaties for the extradition of criminals with Indian native states, or with other Asiatic states conterminous with British India, or to carry into execution the provisions of any such treaties made either before or after the passing of this Act.

24. The testimony of any witness may be obtained in relation to any criminal matter pending in any court or tribunal in a foreign state in like manner as it may be obtained in relation to any civil matter under the Act of the session of the nineteenth and twentieth years of the reign of Her present Majesty, chapter one hundred and thirteen, intituled "An Act to provide for taking evidence in Her Majesty's Dominions in relation to civil and commercial matters pending before foreign tribunals;" and all the provisions of that Act shall be construed as if the term civil matter included a criminal matter, and the term cause included a proceeding against a criminal: Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

25. For the purposes of this Act, every colony, dependency, and constituent part of a foreign state, and every vessel of that state, shall (except where expressly mentioned as distinct in this Act) be deemed to be within the jurisdiction of and to be part of such foreign state.

26. In this Act, unless the context otherwise requires,—

The term "British possession" means any colony, plantation, island, territory, or settlement within Her Majesty's dominions, and not within the United Kingdom, the Channel Islands, and Isle of Man; and all colonies, plantations, islands, territories, and settlements under one legislature, as herein-after defined, are deemed to be one British possession :

The term "legislature" means any person or persons who can exercise legislative authority in a British possession, and where there are local legislatures as well as a central legislature, means the central legislature only :

The term "governor" means any person or persons administering the government of a British possession, and includes the governor of any part of India:

The term "extradition crime" means a crime which, if committed in England or within English jurisdiction, would be one of the crimes described in the first schedule to this Act:

The terms "conviction" and "convicted" do not include or refer to a conviction which under foreign law is a conviction for contumacy, but the term "accused person" includes a person so convicted for contumacy:

The term "fugitive criminal" means any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign state who is in or is suspected of being in some part of Her Majesty's dominions; and the term "fugitive criminal of a foreign state" means a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that state:

The term "Secretary of State" means one of Her Majesty's Principal Secretaries of State:

The term "police magistrate" means a chief magistrate of the metropolitan police courts, or one of the other magistrates of the metropolitan police court in Bow Street:

The term "justice of the peace" includes in Scotland any sheriff, sheriff's substitute, or magistrate:

The term "warrant," in the case of any foreign state, includes any judicial document authorising the arrest of a person accused or convicted of crime.

#### *Repeal of Acts.*

27. The Acts specified in the third schedule to this Act are hereby repealed as to the whole of Her Majesty's dominions; and this Act (with the exception of anything contained in it which is inconsistent with the treaties referred to in the Acts so repealed) shall apply (as regards crimes committed either before or after the passing of this Act), in the case of the foreign states with which those treaties are made, in the same manner as if an Order in Council referring to such treaties had been made in pursuance of this Act, and as if such order had directed that every law and ordinance which is in force in any British possession with respect to such treaties should have effect as part of this Act.

Provided that if any proceedings for or in relation to the surrender of a fugitive criminal have been commenced under the said Acts previously to the repeal thereof, such proceedings may be completed, and the fugitive surrendered, in the same manner as if this Act had not passed.

---

### SCHEDULES.

---

#### FIRST SCHEDULE.

##### LIST OF CRIMES.

The following list of crimes is to be construed according to the law existing in England, or in a British possession, (as the case may be,) at the date of the alleged crime, whether by common law or by statute made before or after the passing of this Act:

Murder, and attempt and conspiracy to murder.

Manslaughter.

Counterfeiting and altering money and uttering counterfeit or altered money.

Forgery, counterfeiting, and altering, and uttering what is forged or counterfeited or altered.

Embezzlement and larceny.

Obtaining money or goods by false pretences.

Crimes by bankrupts against bankruptcy law.

Fraud by a bailee, banker, agent, factor, trustee, or director, or member, or public

officer of any company made criminal by any Act for the time being in force.

Rape.

Abduction.

Child stealing.

Burglary and housebreaking.

Arson.

Robbery with violence.

Threats by letter or otherwise with intent to extort.

Piracy by law of nations.

Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.

Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

---

## SECOND SCHEDULE.

*Form of Order of Secretary of State to the Police Magistrate.*

To the chief magistrate of the metropolitan police courts or other magistrate of the metropolitan police court in Bow Street [or the stipendiary magistrate at ].

WHEREAS, in pursuance of an arrangement with , referred to in an Order of Her Majesty in Council dated the day of , a requisition has been made to me, , one of Her Majesty's Principal Secretaries of State, by the diplomatic representative of for the surrender of , late of

, accused [or convicted] of the commission of the crime of within the jurisdiction of :

Now I hereby, by this my order under my hand and seal, signify to you that such requisition has been made, and require you to issue your warrant for the apprehension of such fugitive, provided that the conditions of The Extradition Act, 1870, relating to the issue of such warrant, are in your judgment complied with.

Given under the hand and seal of the undersigned, one of Her Majesty's Principal Secretaries of State, this day of 18 .

*Form of Warrant of Apprehension by Order of Secretary of State.*

Metropolitan police district, } To all and each of the constables  
[or county or } of the metropolitan police force  
borough of } [or of the county or borough  
to wit. } of ]

WHEREAS the Right Honourable one of Her Majesty's Principal Secretaries of State, by order under his hand and seal, hath signified to me that requisition hath been duly made to him for the surrender of late of accused [or convicted] of the commission of the crime of within the jurisdiction of : This is therefore to command you in Her Majesty's name forthwith to apprehend the said pursuant to The Extradition Act, 1870, wherever he may be found in the United Kingdom or Isle of Man, and bring him before me or some other [\*magistrate sitting in this court], to show cause why he should not be surrendered in pursuance of the said Extradition Act, for which this shall be your warrant.

Given under my hand and seal at [\*Bow Street, one of the police courts of the metropolis] this day of 18 .

J. P.

\* Note.—Alter as required.

*Form of Warrant of Apprehension without Order of Secretary of State.*

Metropolitan police district, } To all and each of the constables  
[or county or } of the metropolitan police force  
borough of } [or of the county or borough  
to wit. } of ]

WHEREAS it has been shown to the undersigned, one of Her Majesty's justices of the peace in and for the metropolitan police district [or the said county or borough of ] that late of is accused

[or convicted] of the commission of the crime of within the jurisdiction of

: This is therefore to command you in Her Majesty's name forthwith to apprehend the said and to bring him before me or some other magistrate sitting at this court [or one of Her Majesty's justices of the peace in and for the county [or borough] of ] to be further dealt with according to law, for which this shall be your warrant.

Given under my hand and seal at Bow Street, one of the police courts of the metropolis, [or in the county or borough aforesaid] this day of 18 .

J. P.

*Form of Warrant for bringing Prisoner before the Police Magistrate.*

County [or borough of to wit. ] { To constable of the police force of and to all other peace officers in the said county [or borough] of

WHEREAS late of accused [or alleged to be convicted of] the commission of the crime of within the jurisdiction of has been apprehended and brought before the undersigned, one of Her Majesty's justices of the peace in and for the said county [or borough] of : And whereas by The Extradition Act, 1870, he is required to be brought before the chief magistrate of the metropolitan police court, or one of the police magistrates of the metropolis sitting at Bow Street, within the metropolitan police district [or the stipendiary magistrate for ]: This is therefore to command you the said constable in Her Majesty's name forthwith to take and convey the said to the metropolitan police district [or the said ] and there carry him before the said chief magistrate or one of the police magistrates of the metropolis sitting at Bow Street within the said district [or before a stipendiary magistrate sitting in the said ] to show cause why he should not be surrendered in pursuance of The Extradition Act, 1870, and otherwise to be

dealt with in accordance with law, for which this shall be your warrant.

Given under my hand and seal at  
in the county [or borough] aforesaid, this  
day of 18 .  
J. P.

*Form of Warrant of Committal.*

Metropolitan police district  
[or the county  
or borough of ] to wit { To one of the  
constables of the metropolitan  
police force, [or of the police  
force of the county or borough  
of ], and to the  
keeper of the .  
Be it remembered, that on this day  
of in the year of our Lord  
late of is brought before me  
the chief magistrate of the metropolitan police  
courts [or one of the police magistrates of the  
metropolis] sitting at the police court in Bow  
Street, within the metropolitan police district,  
[or a stipendiary magistrate for ],  
to show cause why he should not be surrendered  
in pursuance of The Extradition Act, 1870, on  
the ground of his being accused [or convicted] of  
the commission of the crime of  
within the jurisdiction of , and  
forasmuch as no sufficient cause has been shown  
to me why he should not be surrendered in pur-  
suance of the said Act :  
This is therefore to command you the said  
constable in Her Majesty's name forthwith to con-  
vey and deliver the body of the said  
into the custody of the said keeper of the  
at , and you the said keeper to receive

the said into your custody, and him  
there safely to keep until he is thence delivered  
pursuant to the provisions of the said Extra-  
dition Act, for which this shall be your warrant.

Given under my hand and seal at Bow Street,  
one of the police courts of the metropolis,  
[or at the said ] this  
day of 18 .  
J. P.

*Form of Warrant of Secretary of State for  
Surrender of Fugitive.*

To the keeper of and  
to  
WHEREAS late of  
accused [or convicted] of the commission of the  
crime of within the jurisdiction  
of , was delivered into the custody  
of you the keeper of  
by warrant dated pursuant to The  
Extradition Act, 1870 :  
Now I do hereby, in pursuance of the said Act,  
order you the said keeper to deliver the body of  
the said into the custody of the  
said , and I command you the said  
to receive the said  
into your custody, and to convey him within the  
jurisdiction of the said , and there  
place him in the custody of any person or persons  
appointed by the said to receive him,  
for which this shall be your warrant.  
Given under the hand and seal of the under-  
signed, one of Her Majesty's Principal  
Secretaries of State, this  
day of .

THIRD SCHEDULE.

Year and Chapter.	Title.
6 & 7 Vict. c. 75. -	An Act for giving effect to a convention between Her Majesty and the King of the French for the apprehension of certain offenders.
6 & 7 Vict. c. 76. -	An Act for giving effect to a treaty between Her Majesty and the United States of America for the apprehension of certain offenders.
8 & 9 Vict. c. 120. -	An Act for facilitating execution of the treaties with France and the United States of America for the apprehension of certain offenders.
25 & 26 Vict. c. 70. -	An Act for giving effect to a convention between Her Majesty and the King of Denmark for the mutual surrender of criminals.
29 & 30 Vict. c. 121. -	An Act for the amendment of the law relating to treaties of extra- dition.

## CHAP. 53.

*The Sanitary Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *All hospitals in metropolis held to be within district of every nuisance authority for purposes of sect. 26. of the Sanitary Act, 1866.*
3. *How notices shall be given in special drainage districts consisting of part of a parish or made up by more than one parish.*
4. *How orders and demands are to be served or sent in special drainage districts.*

An Act to amend certain provisions in  
the Sanitary and Sewage Utilization  
Acts. (9th August 1870.)

WHEREAS it is expedient further to amend the Sanitary Act, 1866, in order to facilitate the removal of persons suffering from any dangerous, contagious, or infectious disorder who are without proper lodging or accommodation, or are lodged in a room occupied by more than one family, or are on board ship, and to make further provision with respect to special drainage districts consisting of part of a parish or made up out of more parishes than one, and with respect to service of orders and demands of any of Her Majesty's Principal Secretaries of State under the Sanitary and Sewage Utilization Acts:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as *The Sanitary Act, 1870.*

2. For the purposes of the twenty-sixth section of the Sanitary Act, 1866, every hospital or place for the reception of the sick situate within the limits of the metropolis, as defined by the Metropolis Management Act, 1855, shall be deemed to be within the district of every one of the nuisance authorities in the metropolis.

3. Any notice which by virtue of such provisions of the Act of the fifty-eighth year of the reign of King George the Third, chapter sixty-nine, or any of the Acts amending the same or incorporated therewith, as are incorporated by

the fifth section of the Sanitary Act, 1866, is required to be signed by the rector, vicar, or curate, or by a churchwarden or overseer of the poor of the parish, shall in the case of any special drainage district made up of, including part of a parish only, or more than one parish, be signed by the rector, vicar, or curate, or by a churchwarden or overseer of the poor of any parish wholly or partly included in the district, and any notice which by the said Acts or any of them is required to be affixed on or near to the doors of all churches and chapels within the parish shall be affixed to the doors of any church or chapel in the special drainage district, or if there be no such church or chapel, then on the doors of all churches and chapels in the parish or parishes out of which the district has been constituted.

4. Any order or demand of any of Her Majesty's Principal Secretaries of State under the Sanitary and Sewage Utilization Acts shall be deemed to have been duly served on the sewer authority of any district for the purposes of those Acts if served on or sent through the post in a registered letter addressed to any person appointed at a meeting of the sewer authority to receive service, of which appointment notice shall be given to such Secretary of State, or if no such person shall have been appointed, or no notice of such appointment given to the Secretary of State as aforesaid, or if the person so appointed shall refuse, neglect, or be unable to receive such service, then if served on or sent by the post as aforesaid to the rector, curate, or overseer, or the churchwarden or overseer of any parish wholly or partly included in the district: Provided that nothing in this Act shall be taken to affect the provisions of the fifth section of the Sanitary Loans Act, 1869.



## CHAP. 54.

*Dublin City Voters Disfranchisement.*

## ABSTRACT OF THE ENACTMENTS.

1. *Disfranchisement of certain voters of the city of Dublin.*
2. *Evidence of report.*

An Act to disfranchise certain Voters of  
the City of Dublin.

(9th August 1870.)

WHEREAS the Commissioners appointed by the Act passed in the session of Parliament held in the thirty-second and thirty-third years of the reign of Her present Majesty, intituled "An Act for appointing Commissioners to inquire into the existence of corrupt practices amongst the Freemen Electors of the city of Dublin," and by the said Act empowered and directed to make inquiry into the existence, nature, and extent of such corrupt practices, and into the conduct of all persons aiding in or abetting such corrupt practices, have, by their report, dated the third day of May one thousand eight hundred and seventy, reported to Her Majesty that the several persons named in the schedule marked H. annexed to their report were guilty of corrupt practices at the election of one thousand eight hundred and sixty-eight by receiving or contracting to receive money or other valuable consideration for having given or to induce them to give their votes; that the several persons named in the schedule marked I. annexed to their report were proved to have aided in or abetted corrupt practices at the election of one thousand eight hundred and sixty-eight by giving or contracting to give money or other valuable consideration to purchase or for the purpose of purchasing the votes of freemen; that the several persons named in the schedule marked L. annexed to their report were guilty of corrupt practices at the election of one thousand eight hundred and sixty-eight either by

stipulating for employment for reward as the consideration for their votes or as having been employed for reward for the purposes of the election, and subsequently voting at the same for the candidates on whose behalf they were so employed; that the several persons named in the schedule marked M. annexed to their report aided and abetted the corrupt practices of which the persons named in the schedule marked L. annexed to their report were guilty; and that the several persons named in the schedule marked N. annexed to their report were guilty of personating or aiding in the personation of freemen at the election of one thousand eight hundred and sixty-eight:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. From and after the passing of this Act, none of the persons so named in the said schedules, or any of them, shall at any time hereafter have the right of voting at any election of a member or members to serve in Parliament for the city of Dublin.

2. Any copy of the said report by the said Commissioners appointed for the purpose of making inquiries into the existence of corrupt practices amongst the freemen electors of the said city of Dublin, with the schedules thereunto annexed, purporting to be printed by the Queen's authority, shall, for the purposes of this Act, be deemed to be sufficient evidence of the said report and of the schedules annexed thereto.

## CHAP. 55.

*The Siam and Straits Settlements Jurisdiction Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Jurisdiction in certain matters arising in Siam vested in Supreme Court of the Straits Settlements.*
3. *Powers of Her Majesty in respect to said Supreme Court.*

An Act to vest Jurisdiction in matters arising within the Dominions of the Kings of Siam in the Supreme Court of the Straits Settlements.

(9th August 1870.)

WHEREAS doubts have been entertained whether the Supreme Court of the Straits Settlements has the jurisdiction over matters arising in Siam which was vested in the then existing Supreme Court of Her Majesty's Possession of Singapore, by an Order in Council dated the twenty-eighth day of July one thousand eight hundred and fifty-six, and by an Act of the twentieth and twenty-first years of Her Majesty's reign, chapter seventy-five, intituled "An Act to confirm an Order in Council concerning the exercise of jurisdiction in matters arising within the kingdom of Siam:"

And whereas it is expedient that such doubts should be removed, and that such jurisdiction should be vested in the said Supreme Court of the Straits Settlements:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Siam and Straits Settlements Jurisdiction Act, 1870.

2. All the powers and jurisdiction in respect of matters civil and criminal arising within the dominions of the kings of Siam which were vested in the said Supreme Court of Singapore by the herein-before recited Order in Council and Act of Parliament shall be and the same are hereby vested in the said Supreme Court of the Straits Settlements.

3. Her Majesty may, by Order in Council, exercise in respect to the said Supreme Court of the Straits Settlements all the powers which under the said Act Her Majesty might have exercised in respect to the Supreme Court at Singapore.

#### CHAP. 56.

#### *Limited Owners Residences Act, 1870.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Act to be construed with 27 & 28 Vict. c. 114., "Improvement of Land Act, 1864."*
3. *What to be deemed improvements within meaning of "Improvement of Land Act, 1864."*
4. *Limit as to sum to be charged for mansion houses.*
5. *Mode of calculating increased value resulting from outlay.*
6. *In such calculation, other lands settled to same uses may be taken into account.*
7. *Discretionary power of certifying where erection of mansion house suitable, &c.*
8. *Insurance against fire.*
9. *Priority of charges.*
10. *Extent of Act.*

An Act to enable the owners of Settled Estates in England and Ireland to charge such estates, within certain limits, with the expense of building mansions as residences for themselves.

(9th August 1870.)

WHEREAS by an Act of the tenth year of the reign of His late Majesty King George the Third, chapter fifty-one, heirs of entail in Scotland are enabled to charge their estates with sums of money laid out by them in building mansions as residences for themselves:

And whereas such enactment having been found beneficial in that part of the United Kingdom, it is expedient to enable limited owners in other parts of the United Kingdom to build mansions on their estates as residences for themselves:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the "Limited Owners Residences Act, 1870."

2. This Act shall be construed as one with the Act of the session of the twenty-seventh and twenty-eighth years of the reign of Her present Majesty, intituled "Improvement of Land Act, 1864," and the words used in this Act shall be construed in like manner as in the said Act; and the provisions of the said Act shall be applicable, as far as the nature of the case requires, except as is herein otherwise provided, to proceedings under this Act.

3. The erection of mansion houses and such other usual and necessary buildings, outhouses, and offices as are commonly appurtenant thereto and held and enjoyed therewith, and completion of mansion houses and such appurtenances as aforesaid, and improvement of and addition to mansion houses and such appurtenances as aforesaid already erected, or the improvement of and addition to houses which are capable of being converted into mansion houses suitable to the estate on which they stand, so as such improvement and addition be of a permanent nature, provided the mansion houses so erected or enlarged or converted are suitable to the estate on which they stand as residences for the owners of such estate, shall be improvements within the meaning of the "Improvement of Land Act, 1864."

4. The sum charged on any estate under settlement in respect of mansion and other buildings herein-before mentioned shall not exceed two years rental of the said estate, after deducting all public charges and interest of debts and other incumbrances and annuities affecting or which may affect the inheritance after the death of the limited owner, or, in the case of different estates settled to the same uses, and on which charges may have been imposed which affect the whole of such estates, after deducting from the rental of such of the said estates as may be charged with the cost of erecting mansion houses and appurtenances as aforesaid in the manner herein-after provided, so much of the debts and other incumbrances affecting the whole of the estates as shall bear to the whole of the said debts and incumbrances the same proportion as the rental of the

estates to be charged with the cost of erecting a mansion house and appurtenances shall bear to the rental of the whole of the estates settled to the same uses.

5. In calculating whether the improvement would effect a permanent increase of the yearly value of the lands exceeding the yearly amount proposed to be charged thereon, the commissioners shall take into account the effect on such value of any sum expended by the landowner in erecting or adding to such mansion house and appurtenances beyond the sum proposed to be charged.

6. In making such calculation as aforesaid, and in considering the suitability of such mansion house and appurtenances so erected or enlarged as aforesaid to the estate, the commissioners may take into consideration any other lands in the neighbourhood of such estate settled to the same uses as the estate on which such mansion house and appurtenances stand, which, if enjoyed together therewith, would add to the letting value of such mansion house.

7. If the commissioners shall find that the erection or improvement of or addition to any such mansion house and appurtenances are suitable to the estate, but would not in their estimation effect an increase of the yearly value of the lands exceeding the yearly amount proposed to be charged, it shall be in their discretion to certify such improvement.

8. The provision in the Improvement of Land Act respecting assurance of buildings against fire shall apply to mansion houses and appurtenances improved or added to, as well as to those erected under this Act.

9. A charge on land made under this Act shall not take priority of any mortgage or other incumbrance affecting the land charged at the time such charge is made.

10. This Act shall not apply to Scotland.

---

## CHAP. 57.

### *The Gun Licence Act, 1870.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Definition of terms.*
3. *Duty on licence to use a gun.*
4. *Duty and licence to be under the management of the Commissioners of Inland Revenue.*

5. *Form and date of licence.*
6. *Register of licences to be kept.*
7. *Penalty for using or carrying a gun without licence.*
8. *Provision where a gun is carried in parts by two or more persons.*
9. *Licence to be produced on demand, or name and address declared, under penalty of 10l.*
10. *Authorised officers may enter upon lands.*
11. *Licence to be void if person be convicted of any offence under sec. 30. of 1 & 2 W. 4. c. 32., or under 2 & 3 W. 4. c. 68.*
12. *Not to interfere with any other Act requiring authority to keep fire-arms.*

### An Act to grant a Duty of Excise on Licences to use Guns.

(9th August 1870.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the rate and duty herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as "The Gun Licence Act, 1870."

2. In this Act the term "gun" includes a fire-arm of any description and an air gun or any other kind of gun from which any shot, bullet, or other missile can be discharged.

The term "Commissioners" means the Commissioners of Inland Revenue.

3. After the first day of April one thousand eight hundred and seventy there shall be granted and paid unto and for the use of Her Majesty, her heirs and successors, for and in respect of every licence to be taken out yearly by every person who shall use or carry a gun in the United Kingdom, the sum of ten shillings.

4. The said duty and licence shall be an excise duty and licence, and shall be under the management of the Commissioners, and all the provisions in any Act relating to excise duties or licences or to penalties under Excise Acts, and now or hereafter in force, shall apply to the said duty hereby granted, and the licence relating thereto, and the penalties hereby imposed, so far as the same are applicable and not inconsistent with the express provisions of this Act.

5. Every licence to be granted under this Act shall be in such form and shall be granted by such officer of inland revenue and at such place as the Commissioners shall direct, and shall contain the Christian and surname and place of residence of the person to whom the same shall be granted, and shall be dated on the day on which the same shall be granted, and shall expire on the thirty-first day of March next following; but no licence under this Act shall be granted upon payment of a less sum than the duty for a whole year, nor shall any such licence be transferable.

6. Every officer who shall grant licences under this Act shall keep a register of all such licences granted by him, specifying the Christian and surname and place of residence of every person licensed, and the date of each licence, and any justice of the peace or officer of constabulary or constable, or any person licensed under this Act, may at any convenient time inspect such register of licences for the current or preceding year.

7. Every person who shall use or carry a gun elsewhere than in a dwelling house or the curtilage thereof without having in force a licence duly granted to him under this Act shall forfeit the sum of ten pounds.

Provided always, that the said penalty shall not be incurred by the following persons; namely,

- (1.) By any person in the naval, military, or volunteer service of Her Majesty, or in the constabulary or other police force, using or carrying any gun in the performance of his duty, or when engaged in target practice.
- (2.) By any person having in force a licence or certificate to kill game granted to him under the laws of excise in that behalf.
- (3.) By any person carrying a gun belonging to a person having in force a licence or certificate to kill game or a licence under this Act, and by order of such licensed or certificated person and for the use of such licensed or certificated person only, if the person carrying the gun shall, upon the request of any officer of inland revenue or constabulary, or any constable, owner or occupier of the land on which such gun

shall be used or carried, give his true name and address, and also the true name and address of his employer.

- (4.) By the occupier of any lands using or carrying a gun for the purpose only of scaring birds or of killing vermin on such lands, or by any person using or carrying a gun for the purpose only of scaring birds or of killing vermin on any lands by order of the occupier thereof, who shall have in force a licence or certificate to kill game or a licence under this Act.
- (5.) By any gunsmith or his servant carrying a gun in the ordinary course of the trade of a gunsmith, or using a gun by way of testing or regulating its strength or quality in a place specially set apart for the purpose.
- (6.) By any person carrying a gun in the ordinary course of his trade or business as a common carrier.

In any information for the recovery of the penalty imposed by this section, it shall be sufficient to allege that the defendant used or carried a gun without having a licence in force under this Act, and it shall lie upon the defendant to prove that he is a person not incurring the penalty by virtue of the proviso contained in this section.

8. Where a gun is carried in parts by two or more persons in company, each and every one of such persons shall be deemed to carry the gun.

9. It shall be lawful for any officer of inland revenue or for any officer of constabulary or any constable to demand from any person using or carrying a gun (not being a person in the naval, military, or volunteer service of Her Majesty, or in the constabulary or other police force, using or carrying a gun in the performance of his duty) the production of a licence granted to such person under this Act.

If the person upon whom the demand is made shall not produce a licence duly granted to him under this Act, or a licence or certificate to kill game granted to him under the laws of excise, and permit the officer or constable demanding the production thereof to read such licence or certificate, it shall be lawful for such officer or constable to require such person to declare to him immediately his Christian and surname and place of residence, and if such person shall refuse

to declare his Christian and surname and place of residence as aforesaid, he shall for such refusal forfeit the penalty of ten pounds over and above any other penalty to which he may be liable under this or any other Act of Parliament; and it shall be lawful for such officer or constable to arrest such person so refusing, and to convey him before any justice of the peace having jurisdiction at the place where the offence shall be committed, and such justice shall, upon due proof on oath of the offence, or upon the confession of the accused person, convict such person in the penalty aforesaid, or in some mitigated portion thereof, not being less than one fourth; and if such penalty be not immediately paid into the hands of the officer or constable (who is hereby required to receive and pay over the same to the Commissioners), such justice shall commit the offender to hard labour in the proper house of correction for any period not exceeding one month nor less than seven days, or until the penalty shall be sooner paid.

10. It shall be lawful for any officer of inland revenue, officer of constabulary, or constable, who may see any person using or carrying a gun, to enter and remain so long as may be necessary upon any lands or upon any premises (other than a dwelling house or the curtilage thereof) for the purpose of making the demand specified in the preceding section.

11. If any person having obtained a licence under this Act shall be convicted of any offence under section thirty of the Act of the first and second years of King William the Fourth, chapter thirty-two, or under the Act of the second and third years of King William the Fourth, chapter sixty-eight, the said licence shall thenceforth be null and void.

12. No licence granted under this Act shall entitle the person to whom the same is granted to use, carry, or have in his custody or possession any firearm in any part of the United Kingdom where such person is by any other Act now or hereafter in force forbidden to use, carry, or have in his custody or possession any firearm, nor to entitle such person to use, carry, or have in his custody or possession any firearm unless he shall have obtained a licence or permission so to do from any authority empowered by any such other Act to grant such licence or permission.

## CHAP. 58.

*The Forgery Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
  2. *Construction and extent of Act.*
  3. *Forgery of stock certificates, &c.*
  4. *Personation of owners of stock.*
  5. *Engraving plates, &c. for stock certificates, &c.*
  6. *Forgery of certificates of transfer of stocks from England to Ireland, &c.*
  7. *Extension of provisions of Forgery Act to Scotland.*
  8. *Alteration as to Scotland.*
- Schedule.*

An Act to further amend the Law relating to indictable offences by Forgery.  
(9th August 1870.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as The Forgery Act, 1870.

2. This Act shall have effect as one Act with the Act described in the schedule to this Act, but shall extend to the United Kingdom.

3. If any person forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any stock certificate or coupon, or any document purporting to be a stock certificate or coupon, issued in pursuance of Part V. of The National Debt Act, 1870, or of any former Act,—or demands or endeavours to obtain or receive any share or interest of or in any stock as defined in The National Debt Act, 1870, or to receive any dividend or money payable in respect thereof, by virtue of any such forged or altered certificate or coupon, or document purporting as aforesaid, knowing the same to be forged or altered,—with intent in any of the cases aforesaid to defraud, he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

4. If any person falsely and deceitfully personates any owner of any share or interest of or in any such stock as aforesaid, or of any such stock certificate or coupon as aforesaid, and thereby obtains or endeavours to obtain any such stock certificate or coupon,—or receives or en-

deavours to receive any money due to any such owner, as if such person were the true and lawful owner,—he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

5. If any person, without lawful authority or excuse, the proof whereof shall lie on the party accused, engraves or makes on any plate, wood, stone, or other material any stock certificate or coupon purporting to be such a stock certificate or coupon as aforesaid, or to be such a stock certificate or coupon as aforesaid in blank, or to be a part of such a stock certificate or coupon as aforesaid,—or uses any such plate, wood, stone, or other material for the making or printing of any such stock certificate or coupon, or blank stock certificate or coupon as aforesaid, or any part thereof respectively,—or knowingly has in his custody or possession any such plate, wood, stone, or other material,—or knowingly offers, utters, disposes of, or puts off, or has in his custody or possession, any paper on which any such blank stock certificate or coupon as aforesaid, or part of any such stock certificate or coupon as aforesaid, is made or printed,—he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

6. If any person forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any certificate or duplicate certificate required by Part VI. of The National Debt Act, 1870, or by any former like enactment, with intent in any of the cases aforesaid to defraud, he shall be guilty of felony, and being

convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

7. Sections two and four and all provisions relative thereto of the Act described in the schedule to this Act, and all enactments amending those sections and provisions, or any of them, shall extend to Scotland.

8. In the application to Scotland of this Act, and of the enactments by this Act extended to Scotland, the term "high crime and offence" shall be substituted for the term "felony."

---

THE SCHEDULE.

*Act referred to.*

24 & 25 Vict. c. 98.—An Act to consolidate and amend the statute law of England and Ireland relating to indictable offences by forgery.

---

CHAP. 59.

*East India Contracts.*

ABSTRACT OF THE ENACTMENTS.

1. *Deeds, contracts, and instruments executed in India valid notwithstanding certain defects of execution.*
2. *Power to authorities in India to vary forms of execution.*

An Act to render valid certain Contracts informally executed in India.

(9th August 1870.)

WHEREAS by an Act passed in the twenty-second and twenty-third years of the reign of Her present Majesty, amending an Act passed in the twenty-first and twenty-second years of the reign of Her present Majesty, intituled "An Act for the better Government of India," it was provided that any deed, contract, or other instrument made by the authorities therein named for the purpose of disposing of real and personal estate in India vested in Her Majesty under the said last-mentioned Act, or of raising money on such real estate by way of mortgage, or of making proper assurance for that purpose, or of purchasing and acquiring any lands and hereditaments, or any interest therein, stores, goods, chattels, and other property in India, and of entering into any contracts whatsoever for the purposes of the said first-mentioned Act, may be expressed to be executed as on behalf of the Secretary of State for India in Council, by or by order of the Governor General in Council, or the Governor of Fort Saint George or of Bombay in Council:

And whereas by an Act passed in the thirty-second and thirty-third years of Her said Majesty it was recited, that certain deeds had been issued for Inam lands in the Presidency of Fort Saint George by the Inam commissioner in the execution of his office in that respect, which, by reason of certain defects in the expression of the execution thereof, it was apprehended might be

invalid; and provision was thereupon made by the said last-mentioned Act that the said title deeds should not be deemed invalid by reason of such defects:

And whereas it is apprehended that other deeds, contracts, and instruments made for the purpose expressed in the said first-recited Act, besides such title deeds as aforesaid, may be invalid or deemed invalid for the like reason, and such provision as aforesaid should therefore be made more general:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Every deed, contract, or other instrument made in India for the purposes and by the authorities expressed in the said first-recited Act up to the date of the passing of this Act, and for any further period within the limit of one year to which the Governor General in Council may deem it advisable to extend the operation of this Act, which is expressed to be executed by or by order of or on behalf of the Governor General of India in Council, the Governor of Fort Saint George in Council, or the Governor of Bombay in Council, or by any Lieutenant-Governor or Chief Commissioner, or any other officer for the time being entrusted with the government, charge, or care of any presidency, province, or district of British India within the limits of their respective governments, provinces, or districts, and every deed, contract, or other instrument so executed in

British India by any person authorised in this behalf by the Secretary of State for India in Council, shall be and be deemed to have been as valid as if it had been executed in conformity with the provisions of the said first-recited Act; provided that such deed, contract, or other instrument has been in other respects duly executed according to the law in force at the date of its execution.

2. It shall be lawful for the Governor General,

by resolution in Council, from time to time to vary the form of execution prescribed by the said first-recited Act for the deeds, contracts, and other instruments to which it relates, and to empower such authorities as to him may seem expedient to vary it within the respective limits of their local jurisdiction; and deeds, contracts, and other instruments executed according to forms so altered shall have in all respects the like validity as if they had been executed according to the provisions of the said first-recited Act.

## CHAP. 60.

### *London Brokers Relief Act, 1870.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Jurisdiction of the court of aldermen over brokers to cease.*
3. *No bond to be enforced so far as relates to jurisdiction of court over brokers.*
4. *Pending proceedings not to be prejudiced.*
5. *Saving existing rights.*
6. *Brokers committing fraud to be disqualified from acting as brokers.*

An Act to relieve the Brokers of the City of London from the supervision of the Court of Mayor and Aldermen of the said City. (9th August 1870.)

WHEREAS by an Act of Parliament made in the sixth year of the reign of Queen Anne, intituled "An Act for repealing the Act of the first year of King James the First, intituled 'An Act for the well garbling of spices and for granting an equivalent to the city of London by admitting brokers,'" it was amongst other things enacted that from and after the determination of the then session of Parliament all persons that should act as brokers within the city of London and liberties thereof should from time to time be admitted so to do by the court of mayor and aldermen of the said city for the time being under such restrictions and limitations for their honest and good behaviour as the said court should think fit and reasonable, and should upon such their admission pay to the chamberlain of the said city for the time being, for the uses therein-after mentioned, the sum of forty shillings, and should also yearly pay to the said uses the sum of forty shillings upon the twenty-ninth day of September in every year; and it was further enacted that if any person or persons from and after the determination of the then session of Parliament should take upon him to act as a broker or employ any other under him

to act as such within the said city and liberties not being admitted as aforesaid, every such person so offending should forfeit and pay to the use of the said mayor and commonalty and citizens of the said city for every such offence the sum of twenty-five pounds, to be recovered as in the said Act is mentioned:

And whereas by an Act (local and personal) made and passed in the fifty-seventh year of the reign of King George the Third, intituled "An Act for granting an equivalent for the diminution of the profits of the office of gauger of the city of London, and increasing the payments to be made by brokers," after reciting amongst other things the before-mentioned Act, it was amongst other things enacted that all persons that from and after the first day of July next after the passing of that Act should be admitted to act as brokers within the city of London and liberties thereof by the said court in pursuance of the said recited Act of Parliament should upon such their admission, over and above the sum of forty shillings required to be paid by the said recited Act, pay to the chamberlain of the said city for the time being the sum of three pounds, and should also yearly pay to the said chamberlain, over and above the said yearly sum of forty shillings required to be paid by the said recited Act, the sum of three pounds on the twenty-ninth day of September in every year; and it was amongst other things further enacted that so much of the said recited Act as imposed a penalty



of twenty-five pounds upon any person who should take upon him to act as a broker, or employ any person under him to act as such not being admitted in pursuance of the said recited Act, should be and the same was thereby repealed; and that from and after the passing of the now reciting Act if any person should take upon him to act as a broker, or employ, or cause, permit, or suffer any person or persons to be employed with, under, or for him, to act as such within the said city and liberties, not being admitted in pursuance of the said recited Act, every such person so offending should forfeit and pay to the use of the mayor and commonalty and citizens of the said city for every such offence the sum of one hundred pounds, to be recovered as in the now reciting Act is mentioned:

And whereas the said court of mayor and aldermen of the said city (herein-after called "the court"), acting by virtue of the powers conferred upon them by the said recited Acts, or one of them, or by virtue of some other authority, have from time to time made and established rules and regulations for the admission of brokers within the city of London and liberties thereof, and have imposed restrictions and limitations on the manner in which the persons whom they have admitted into the office and employment of a broker within the said city and liberties thereof were and are to carry on their business as brokers, and have exercised and claim a right to exercise jurisdiction and control over such brokers for the purpose of enforcing the observance of the said regulations, restrictions, and limitations:

And whereas the said court have also required every broker admitted by them to find two sureties to be approved of by the said court to enter into a bond for the due and just execution by the broker of his said office and employment, or in place of such sureties have required such broker to transfer into the joint names of himself and the chamberlain of the said city stock in the public funds to the nominal amount of one thousand pounds:

And whereas the said court have also required each broker admitted by them to enter into his own bond in the penal sum of one thousand pounds to secure the due performance of his duties as a broker, and also to secure the annual payment of the sums of two pounds and three pounds to the chamberlain of the city pursuant to the provisions of the said Acts of the sixth year of the reign of Queen Anne and of the fifty-seventh year of the reign of King George the Third:

And whereas it is expedient to relieve the said brokers from the necessity of providing such sureties or entering into such personal bond, and from the jurisdiction and supervision exercised by the said court over the brokers, in manner herein-after provided:

May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the "London Brokers Relief Act, 1870."

2. After the passing of this Act the court shall not require a broker, by himself or sureties, to give any bond on his admission as a broker, and the jurisdiction, supervision, and control of the said court over brokers in the said city of London and the liberties thereof shall cease, and the said court shall not have power to make or enforce any rules, orders, regulations, restrictions, limitations, or penalties affecting, except as herein-after mentioned, the admission of such brokers, or the manner in which the business of such brokers shall be carried on.

3. No bond or declaration of trust executed by any broker in pursuance of any rules, orders, or regulations heretofore in force shall after the passing of this Act be put in suit or enforced, and all sums of stock transferred by way of security as aforesaid shall, from and after the passing of this Act, be held in trust for the broker transferring the same, and upon no other trust.

4. Nothing in this Act contained shall prejudice any proceedings actually commenced before the passing of this Act upon any such bond or declaration of trust.

5. Except as herein expressly enacted, this Act shall not extend to take away from the said court such right as they now have under the recited Acts to require brokers to be admitted, or to repeal the penalty of one hundred pounds imposed by the said Act of the fifty-seventh George the Third, in the case therein mentioned, or affect the liability of brokers when admitted to pay to the chamberlain of the said city, for the uses mentioned in the said recited Acts respectively, the sums of forty shillings and three pounds on admission, and the yearly sums of forty shillings and three pounds, which are made payable by the said recited Acts respectively; and the said yearly sums of two pounds and three pounds may be recovered by the chamberlain of the said city for the time being in the Mayor's Court of the City of London, or in the City of London Court.

6. The court shall keep a list containing the names and addresses of all brokers who shall from time to time have been admitted, and if any

such broker shall be convicted in any criminal court of felony or fraud, or if a judge of any of the superior courts of law or equity, or a judge in bankruptcy, shall in any action, suit, or other proceeding prosecuted or depending before such judge, and to which such broker shall be a party, certify (as he is hereby empowered to do) that such broker has been guilty of fraud, and that he

ought to be disqualified from acting as a broker altogether, or for such period as such judge shall name in the certificate, such broker shall accordingly be disqualified as from the date of such conviction or certificate, and his name shall thereupon be removed by the court of aldermen from the list of brokers either absolutely or for the time mentioned in such certificate.

## CHAP. 61.

*The Life Assurance Companies Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
  2. *Interpretation of terms.*
  3. *Deposit.*
  4. *Life funds separate.*
  5. *Statements to be made by companies.*
  6. *Statements by company doing other than life business.*
  7. *Actuarial report and abstract.*
  8. *Statement of life and annuity business.*
  9. *Forms may be altered.*
  10. *Statements, &c. to be signed and printed and deposited with Board of Trade.*
  11. *Copies of statements to be given to shareholders, &c.*
  12. *List of shareholders.*
  13. *Deed of settlement to be printed.*
  14. *Amalgamation or transfer.*
  15. *Statements in case of amalgamation or transfer.*
  16. *Documents may be transferred from Board of Trade to registry of joint stock companies.*
  17. *Documents to be received in evidence.*
  18. *Penalty for non-compliance with Act.*
  19. *Penalty for falsifying statements, &c.*
  20. *Penalties how to be recovered and applied.*
  21. *Other circumstances under which company may be wound up by the Court of Chancery.*
  22. *Power to Court to reduce contracts.*
  23. *Notices under this Act to policy holders.*
  24. *Statements, &c. to be laid before Parliament.*
  25. *Exceptions.*
- Schedules.*

An Act to amend the law relating to  
Life Assurance Companies.  
(9th August 1870.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as "The Life Assurance Companies Act, 1870."

2. In this Act—

The term "company" means any person or persons, corporate or unincorporate, not

being registered under the Acts relating to friendly societies, who issue or are liable under policies of assurance upon human life within the United Kingdom, or who grant annuities upon human life within the United Kingdom :

The term "chairman" means the person for the time being presiding over the court or board of directors of the company :

The term "policy holder" means the person who for the time being is the legal holder of the policy for securing the life assurance, endowment, annuity, or other contract with the company :

The term "financial year" means each period of twelve months at the end of which the

balance of the accounts of the company is struck, or if no such balance is struck, then each period of twelve months ending with the thirty-first day of December:

The term "Court" means, in the case of a company registered or having its head office in England, the High Court of Chancery; in the case of a company registered or having its head office in Ireland, the Court of Chancery in Ireland; in all cases of companies registered or having its head office in Scotland, the Court of Session, in either division thereof:

The term "registrar" means the Registrar of Joint Stock Companies in England and Scotland, and the Assistant Registrar of Joint Stock Companies in Ireland.

3. Every company established after the passing of this Act within the United Kingdom, and every company established or to be established out of the United Kingdom which shall after the passing of this Act commence to carry on the business of life assurance within the United Kingdom, shall be required to deposit the sum of twenty thousand pounds with the Accountant General of the Court of Chancery, to be invested by him in one of the securities usually accepted by the Court for the investment of funds placed from time to time under its administration, the company electing the particular security and receiving the income therefrom, and the registrar shall not issue a certificate of incorporation unless such deposit shall have been made, and the Accountant General shall return such deposit to the company so soon as its life assurance fund accumulated out of the premiums shall have amounted to forty thousand pounds.

4. In the case of a company established after the passing of this Act transacting other business besides that of life assurance, a separate account shall be kept of all receipts in respect of the life assurance and annuity contracts of the company, and the said receipts shall be carried to and form a separate fund to be called the life assurance fund of the company, and such fund shall be as absolutely the security of the life policy and annuity holders as though it belonged to a company carrying on no other business than that of life assurance, and shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of life assurance; and in respect to all existing companies, the exemption of the life assurance fund from liability for other obligations than to its life policy holders shall have reference only to the contracts entered into after the passing of this Act, unless by the constitution of the company such exemption already exists: Provided always, that this section shall not apply

to any contracts made by any existing company by the terms of whose deed of settlement the whole of the profits of all the business are paid exclusively to the life policy holders, and on the face of which contracts the liability of the assured distinctly appears.

5. From and after the passing of this Act, every company shall, at the expiration of each financial year of such company, prepare a statement of its revenue account for such year, and of its balance sheet at the close of such year, in the forms respectively contained in the first and second schedules to this Act.

6. Every company which, concurrently with the granting of policies of assurance or annuities on human life, transacts any other kind of assurance or other business, shall, at the expiration of each such financial year as aforesaid, prepare statements of its revenue account for such year, and of its balance sheet at the close of such year, in the forms respectively contained in the third and fourth schedules of this Act.

7. Every company shall, once in every five years if established after the passing of this Act, and once every ten years if established before the passing of this Act, or at such shorter intervals as may be prescribed by the instrument constituting the company, or by its regulations or by-laws, cause an investigation to be made into its financial condition by an actuary, and shall cause an abstract of the report of such actuary to be made in the form prescribed in the fifth schedule to this Act.

8. Every company shall, on or before the thirty-first day of December one thousand eight hundred and seventy-two, and thereafter within nine months after the date of each such investigation as aforesaid into its financial condition, prepare a statement of its life assurance and annuity business in the form contained in the sixth schedule to this Act, each of such statements to be made up as at the date of the last investigation, whether such investigation be made previously or subsequently to the passing of this Act: Provided as follows:

- (1.) If the next financial investigation after the passing of this Act of any company fall during the year one thousand eight hundred and seventy-three, the said statement of such company shall be prepared within nine months after the date of such investigation, instead of on or before the thirty-first day of December one thousand eight hundred and seventy-two:
- (2.) If such investigation be made annually by any company, such company may prepare

such statement at any time, so that it be made at least once in every three years.

The expression date of each such investigation in this section shall mean the date to which the accounts of each company are made up for the purposes of each such investigation.

9. The Board of Trade, upon the applications of or with the consent of a company, may alter the forms contained in the schedules to this Act, for the purpose of adapting them to the circumstances of such company, or of better carrying into effect the objects of this Act.

10. Every statement or abstract herein-before required to be made shall be signed by the chairman and two directors of the company and by the principal officer managing the life assurance business, and, if the company has a managing director, by such managing director, and shall be printed; and the original, so signed as aforesaid, together with three printed copies thereof, shall be deposited at the Board of Trade within nine months of the dates respectively herein-before prescribed as the dates at which the same are to be prepared. And every annual statement so deposited after the next investigation shall be accompanied by a printed copy of the abstract required to be made by section seven.

11. A printed copy of the last deposited statement, abstract, or other document by this Act required to be printed shall be forwarded by the company, by post or otherwise, on application, to every shareholder and policy holder of the company.

12. Every company which is not registered under "The Companies Act, 1862," and which has not incorporated in its deed of settlement section ten of "The Companies Clauses Consolidation Act, 1845," shall keep a "Shareholders Address Book," in accordance with the provisions of that section, and shall furnish, on application, to every shareholder and policy holder of the company, a copy of such book, on payment of a sum not exceeding sixpence for every hundred words required to be copied for such purpose.

13. Every company which is not registered under "The Companies Act, 1862," shall cause a sufficient number of copies of its deed of settlement to be printed, and shall furnish, on application, to every shareholder and policy holder of the company, a copy of such deed of settlement on payment of a sum not exceeding two shillings and sixpence.

14. Where it is intended to amalgamate two or more companies, or to transfer the life assurance business of one company to another, the directors

of any one or more of such companies may apply to the Court, by petition, to sanction the proposed arrangement, notice of such application being published in the Gazette, and the Court, after hearing the directors and other persons whom it considers entitled to be heard upon the petition, may confirm the same if it is satisfied that no sufficient objection to the arrangement has been established.

Before any such application is made to the Court, a statement of the nature of the amalgamation or transfer, as the case may be, together with an abstract containing the material facts embodied in the agreement or deed under which such amalgamation or transfer is proposed to be effected, and copies of the actuarial or other reports upon which such agreement or deed is founded, shall be forwarded to each policy holder of both companies in case of amalgamation, or to each policy holder of the transferred company in case of transfer, by the same being transmitted in manner provided by section one hundred and thirty-six of The Companies Clauses Consolidation Act, 1845, for the transmission to shareholders of notices not requiring to be served personally; and the agreement or deed under which such amalgamation or transfer is effected shall be open for the inspection of the policy holders and shareholders at the office or offices of the company or companies for a period of fifteen days after the issuing of the abstract herein provided.

The Court shall not sanction any amalgamation or transfer in any case in which it appears to the Court that policy holders representing one tenth or more of the total amount assured in any company which it is proposed to amalgamate, or in any company the business of which it is proposed to transfer, dissent from such amalgamation or transfer.

No company shall amalgamate with another, or transfer its business to another, unless such amalgamation or transfer is confirmed by the Court in accordance with this section.

Provided always, that this section shall not apply in any case in which the business of any company which is sought to be amalgamated or transferred does not comprise the business of life assurance.

15. When an amalgamation takes place between any companies, or when the business of one company is transferred to another company, the combined company or the purchasing company, as the case may be, shall, within ten days from the date of the completion of the amalgamation or transfer, deposit with the Board of Trade certified copies of statements of the assets and liabilities of the companies concerned in such amalgamation or transfer, together with a statement of the nature and terms of the amalgamation or transfer, and a certified copy of the agreement or deed under

which such amalgamation or transfer is effected, and certified copies of the actuarial or other reports upon which such agreement or deed is founded; and the statement and agreement or deed of amalgamation or transfer shall be accompanied by a declaration under the hand of the chairman of each company and the principal managing officer of each company, that to the best of their belief every payment made or to be made to any person whatsoever on account of the said amalgamation or transfer is therein fully set forth, and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities, or other property by or with the knowledge of any parties to the said amalgamation or transfer.

16. The Board of Trade may direct any printed or other documents required by this Act, or certified copies thereof, to be kept by the registrar of Joint Stock Companies or other officer of the Board of Trade; and any person may, on payment of such fees as the Board of Trade may direct, inspect the same at his office, and procure copies thereof.

17. Every statement, abstract, or other document deposited with the Board of Trade or with the registrar of Joint Stock Companies under this Act shall be receivable in evidence; and every document purporting to be certified by one of the secretaries or assistant secretaries of the Board of Trade, or by the said registrar, to be such deposited document, and every document purporting to be similarly certified to be a copy of such deposited document, shall, if produced out of the custody of the Board of Trade or of the said registrar, be deemed to be such deposited document as aforesaid, or a copy thereof, and shall be received in evidence as if it were the original document, unless some variation between it and the original document shall be proved.

18. Every company which makes default in complying with the requirements of this Act shall be liable to a penalty not exceeding fifty pounds for every day during which the default continues; and if default continue for a period of three months after notice of default by the Board of Trade, which notice shall be published in one or more newspapers as the Board of Trade may direct, and after such publication the Court may order the winding up of the company, in accordance with The Companies Act, 1862, upon the application of one or more policy holders or shareholders.

19. If any statement, abstract, or other document required by this Act is false in any particular to the knowledge of any person who signs the same, such person shall be liable on conviction thereof on indictment to fine and imprisonment,

or on summary conviction thereof to a penalty not exceeding fifty pounds.

20. Every penalty imposed by this Act shall be recovered and applied in the same manner as penalties imposed by The Companies Act, 1862, are recoverable and applicable.

21. The Court may order the winding up of any company, in accordance with The Companies Act, 1862, on the application of one or more policy holders or shareholders, upon its being proved to the satisfaction of the Court that the company is insolvent, and in determining whether or not the company is insolvent the Court shall take into account its contingent or prospective liability under policies and annuity and other existing contracts; but the Court shall not give a hearing to the petition until security for costs for such amount as the judge shall think reasonable shall be given, and until a *prima facie* case shall also be established to the satisfaction of the judge; and in the case of a proprietary company having an uncalled capital of an amount sufficient with the future premiums receivable by the company to make up the actual invested assets equal to the amount of the estimated liabilities, the Court shall suspend further proceedings on the petition for a reasonable time (in the discretion of the Court) to enable the uncalled capital, or a sufficient part thereof, to be called up; and if at the end of the original or any extended time for which the proceedings shall have been suspended such an amount shall not have been realized by means of calls as, with the already invested assets, to be equal to the liabilities, an order shall be made on the petition as if the company had been proved insolvent.

22. The Court, in the case of a company which has been proved to be insolvent, may, if it thinks fit, reduce the amount of the contracts of the company upon such terms and subject to such conditions as the Court thinks just, in place of making a winding-up order.

23. Any notice which is by this Act required to be sent to any policy holder may be addressed and sent to the person to whom notices respecting such policy are usually sent, and any notice so addressed and sent shall be deemed and taken to be notice to the holder of such policy.

24. The Board of Trade shall lay annually before Parliament the statements and abstracts of reports deposited with them under this Act during the preceding year.

25. This Act shall not affect the Commissioners for the Reduction of the National Debt, nor the Postmaster General, acting under the authorities

vested in them respectively by the Acts tenth George the Fourth, chapter forty-one, third and fourth William the Fourth, chapter fourteen, sixteenth and seventeenth Victoria, chapter forty-five, and twenty-seventh and twenty-eighth Victoria, chapter forty-three.

—o—o—o—  
FIRST SCHEDULE.

Revenue Account of the _____ for the year ending _____.					
18 . (Date.)		£ s. d.	18 . (Date.)		£ s. d.
	Amount of funds at the beginning of the year - -			Claims under policies (after deduction of sums re-assured) -	
	Premiums - - -			Surrenders - - -	
	Consideration for annuities granted - - -			Annuities - - -	
	Interest and dividends - -			Commission - - -	
	Other receipts (accounts to be specified) - - -			Expenses of management -	
				Dividends and bonuses to shareholders (if any) - -	
				Other payments (accounts to be specified) - - -	
				Amount of funds at the end of the year, as per Second Schedule	
		£ _____			£ _____

*Note 1.*—Companies having separate accounts for annuities to return the particulars of their annuity business in a separate statement.

*Note 2.*—Items in this and in the accounts in the Third and Fifth Schedules should be the net amounts after deduction of the amounts paid and received in respect of re-assurances.

SECOND SCHEDULE.

Balance sheet of the _____ on the _____ 18__.			
LIABILITIES.	£ s. d.	ASSETS.	£ s. d.
Shareholders' capital paid up (if any) - - - £		Mortgages on property within the United Kingdom - - -	
Assurance fund - - -		Do. do. out of the United Kingdom - - -	
Annuity fund (if any) - -		Loans on the company's policies -	
Other funds, if any, to be specified - - -		Investments:	
		In British Government securities -	
		Indian and Colonial government securities - - -	
		Foreign government do. -	
		Railway and other debentures and debenture stocks - - -	
		Do. shares (preference and ordinary) - - -	
		House property - - -	
		Other investments (to be specified) -	
Total funds as per First Schedule £		Loans upon personal security - - -	
Claims admitted but not paid * - -		Agents' balances - - -	
Other sums owing by the company * (accounts to be specified) - - -		Outstanding premiums - - -	
		Do. interest - - -	
		Cash:	
		On deposit - - - £	
		In hand and on current account - - -	
		Other assets (to be specified) - -	
	£ _____		£ _____

\* *Note.*—These items are included in the corresponding items in the First Schedule.

## THIRD SCHEDULE.

Revenue Accounts of the \_\_\_\_\_ for the year ending \_\_\_\_\_.

## (No. 1.) LIFE ASSURANCE ACCOUNT.

(Data.)	Amount of life assurance fund at the beginning of the year -		(Data.)	Claims under life policies (after deduction of sums re-assured)	
	Premiums, after deduction of re-assurance premiums -			Surrenders - - -	
	Consideration for annuities granted - - -			Annuities - - -	
	Interest and dividends -			Commission - - -	
	Other receipts (accounts to be specified) - - -			Expenses of management -	
				Other payments (accounts to be specified) - - -	
				Amount of life assurance fund at the end of the year, as per Fourth Schedule - -	
		£			£

Note.—Companies having separate accounts for annuities to return the particulars of their annuity business in a separate statement.

## (No. 2.) FIRE ACCOUNT.

	Amount of fire insurance fund at the beginning of the year -			Losses by fire, after deduction of re-assurances - -	
	Premiums received, after deduction of re-assurances -			Expenses of management -	
	Other receipts to be specified -			Commission - - -	
				Other payments to be specified -	
				Amount of fire insurance fund at the end of the year, as per Fourth Schedule - -	
		£			£

Note.—When marine or any other branch of business is carried on, the income and expenditure thereof to be in like manner stated in a separate account.

## (No. 3.) PROFIT AND LOSS ACCOUNT.

	Balance of last year's account -			Dividends and bonuses to shareholders - - -	
	Interest and dividends not carried to other accounts - -			Expenses not charged to other accounts - - -	
	Profit realised (accounts to be specified) - - -			Loss realised (accounts to be specified) - - -	
	Other receipts - - -			Other payments - - -	
				Balance as per Fourth Schedule	
		£			£

Note.—This account is not required if the items have been incorporated in the other accounts of this schedule.

## FOURTH SCHEDULE.

Balance Sheet of the \_\_\_\_\_ on the \_\_\_\_\_ 18\_\_.

LIABILITIES.	£ s. d.	ASSETS.	£ s. d.
Shareholders capital - -		Mortgages on property within the United Kingdom - - -	
General reserve fund (if any) -		Do. do. out of the United Kingdom - - -	
Life assurance fund* - - -		Loans on the company's policies -	
Annuity fund (if any)* - -		Investments :	
Fire fund - - - -		In British Government securities -	
Marine fund - - - -		Indian and Colonial do. -	
Profit and loss (if any) - -		Foreign do. -	
Other funds, if any, to be specified -		Railway and other debentures and debenture stocks - -	
Claims under life policies £ s. d. admitted but not yet paid* - - -	£	Do. shares (preference and ordinary) - - -	
Outstanding fire losses -		House property - - -	
Do. marine do. -		Other investments (to be specified)	
Other sums owing by the company (accounts to be specified) - -		Loans upon personal security -	
		Agents balances - - -	
		Outstanding premiums - -	
		Do. interest - - -	
		Cash :	
		On deposit - - £	
		In hand and on current account -	
		Other assets (to be specified) -	
	£		£

\* If the life assurance fund is, in accordance with section 4. of this Act, a separate trust fund for the sole security of the life policy holders, a separate balance sheet for the life branch may be given in the form contained in Schedule 2. In other respects the company is to observe the above form. See also note to Second Schedule.



## FIFTH SCHEDULE.

STATEMENT respecting the VALUATION of the  
LIABILITIES under LIFE POLICIES and  
ANNUITIES of the \_\_\_\_\_, to be  
made by the ACTUARY.

(The answers should be numbered to accord with  
the numbers of the corresponding questions.)

1. The date up to which the valuation is made.
2. The principles upon which the valuation  
and distribution of profits among the policy  
holders are made, and whether these principles  
were determined by the instrument constituting  
the company, or by its regulations or byelaws, or  
otherwise.
3. The table or tables of mortality used in the  
valuation.
4. The rate or rates of interest assumed in the  
calculations.
5. The proportion of the annual premium  
income, if any, reserved as a provision for future  
expenses and profits. (If none, state how this  
provision is made.)
6. The consolidated revenue account since the  
last valuation, or, in case of a company which  
has made no valuation, since the commencement  
of the business. (This return should be made in  
the form annexed.)

7. The liabilities of the company under life  
policies and annuities at the date of the valua-  
tion, showing the number of policies, the amount  
assured, and the amount of premiums payable  
annually under each class of policies, both with  
and without participation in profits; and also  
the net liabilities and assets of the company,  
with the amount of surplus or deficiency. (These  
returns should be made in the forms annexed.)

8. The time during which a policy must be  
in force in order to entitle it to share in the  
profits.

9. The results of the valuation, showing—

- (1.) The total amount of profit made by the  
company.
- (2.) The amount of profit divided among the  
policy holders, and the number and amount  
of the policies which participated.
- (3.) Specimens of bonuses allotted to policies  
for 100% effected at the respective ages of  
20, 30, 40, and 50, and having been respec-  
tively in force for five years, ten years, and  
upwards, at intervals of five years respec-  
tively, together with the amounts appor-  
tioned under the various modes in which  
the bonus might be received.

(Form referred to under heading No. 6. in the Fifth Schedule.)

Consolidated Revenue Account of the \_\_\_\_\_ for \_\_\_\_\_ years  
commencing \_\_\_\_\_ and ending \_\_\_\_\_.

	£	s.	d.		£	s.	d.
Amount of funds on _____ 18____,—the beginning of - - -				Claims under policies (after deduction of sums re-assured) - - -			
Premiums (after deduction of re-assur- ance premiums) - - -				Surrenders - - -			
Consideration for annuities granted -				Annuities - - -			
Interest and dividends - -				Commission - - -			
Other receipts (accounts to be specified)				Expenses of management - -			
				Dividends and bonuses to share- holders (if any) - - -			
				Other payments (accounts to be speci- fied) - - -			
				Amount of funds on _____ 18____,— the end of the period, as per First (or Third) Schedule - -			
£				£			

(FORM referred to under heading No. 7. in Fifth Schedule.)

SUMMARY and VALUATION of the POLICIES of the

as at 18 .

Description of Transactions.	Particulars of the POLICIES for Valuation.				VALUATION.			
	Number of policies.	Sums assured and bonuses.	Office yearly pre- miums.	Net yearly pre- miums, if ascertained.	Value by the	Table, Interest	per cent.	
					Sums assured and bonuses.	Office yearly pre- miums.	Net yearly pre- miums, if computed.	Net liability.
<b>ASSURANCES.</b>								
<i>I. With participation in profits.</i>								
For whole term of life -								
Other classes (to be speci- fied) -								
Extra premiums payable -								
Total Assurances with profits -								
<i>II. Without participation in profits.</i>								
For whole term of life -								
Other classes (to be speci- fied) -								
Extra premiums payable -								
Total Assurances with- out profits -								
Total assurances -								
Deduct re-assurances -								
Net amount of assur- ances -								
Adjustments, if any -								
<b>ANNUITIES.</b>								
Immediate -								
Other classes (to be speci- fied) -								
Total of the results -	-	-	-					

The term "extra premium" in this Act shall be taken to mean the charge for any risk not provided for in the minimum contract premium. If policies are issued in or for any country at rates of premium deducted from tables other than the European mortality tables adopted by the company, separate schedules similar in form to the above must be furnished.

(Form referred to under heading No. 7. in Fifth Schedule.)

VALUATION BALANCE SHEET of		as at	18 .
Dr.	£	Cr.	£
To net liability under Assurance and Annuity transactions (as per summary statement provided in Schedule 5) - - -		By life assurance and annuity funds (as per balance sheet under Schedule 2 or 4) - - -	
To surplus, if any - - -		By deficiency, if any - - -	

## SIXTH SCHEDULE.

STATEMENT of the LIFE ASSURANCE and ANNUITY BUSINESS of the  
on the 18 .

(The answers should be numbered to accord with the numbers of the corresponding questions. Statements of re-assurances corresponding to the statements in respect of assurances, under headings 2, 3, 4, 5, and 6, are to be given.)

1. The published table or tables of premiums for assurances for the whole term of life which are in use at the date above mentioned.

2. The total amount assured on lives for the whole term of life, which are in existence at the date above mentioned, distinguishing the portions assured with and without profits, stating separately the total reversionary bonuses and specifying the sums assured for each year of life from the youngest to the oldest ages.

3. The amount of premiums receivable annually for each year of life, after deducting the abatements made by the application of bonuses, in respect of the respective assurances mentioned under heading No. 2, distinguishing ordinary from extra premiums.

4. The total amount assured under classes of assurance business, other than for the whole term of life, distinguishing the sums assured under each class, and stating separately the amount assured with and without profits, and the total amount of reversionary bonuses.

5. The amount of premiums receivable annually in respect of each such special class of

assurances mentioned under heading No. 4, distinguishing ordinary from extra premiums.

6. The total amount of premiums which has been received from the commencement upon all policies under each special class mentioned under heading 4 which are in force at the date above mentioned.

7. The total amount of immediate annuities on lives, distinguishing the amounts for each year of life.

8. The amount of all annuities other than those specified under heading No. 7, distinguishing the amount of annuities payable under each class, the amount of premiums annually receivable, and the amount of consideration money received in respect of each such class, and the total amount of premiums received from the commencement upon all deferred annuities.

9. The average rate of interest at which the life assurance fund of the company was invested at the close of each year during the period since the last investigation.

10. A table of minimum values, if any, allowed for the surrender of policies for the whole term of life and for endowments and endowment assurances, or a statement of the method pursued in calculating such surrender values, with instances of its application to policies of different standing and taken out at various interval ages from the youngest to the oldest.

Separate statements to be furnished for business at other than European rates, together with a statement of the manner in which policies on unhealthy lives are dealt with.

## CHAP. 62.

*The Factory and Workshop Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

*Preliminary.*1. *Short title.*

## PART I.—PRINT WORKS AND BLEACHING AND DYEING WORKS.

2. *Construction of Act.*3. *Definition of terms.*4. *Application of Factory Acts to print works and bleaching and dyeing works.*5. *Repeal of Acts.*

## PART II.—FRUIT AND FISH PRESERVES.

6. *Modification as regards manufactures of preserves of fruit and fish of 30 & 31 Vict. c. 103. and 30 & 31 Vict. c. 146. Schedules.*

An Act to amend and extend the Acts  
relating to Factories and Workshops.  
(9th August 1870.)

WHEREAS it is expedient to extend the Acts relating to factories to print works and bleaching and dyeing works, and to amend the Acts relating to factories and workshops:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

*Preliminary.*

1. This Act may be cited as "The Factory and Workshop Act, 1870."

## PART I.—PRINT WORKS AND BLEACHING AND DYEING WORKS.

2. This part of this Act shall be construed as one with the Factory Acts Extension Act, 1867, in this part of this Act referred to as the principal Act.

## 3. In this Act—

The term "print works" means any premises in which any persons are employed to print figures, patterns, or designs upon any cotton, linen, woollen, worsted, or silken yarn, or upon any woven or felted fabric, not being paper:

The term "bleaching and dyeing works" means any premises, whether in the open air or not, in which the processes of bleaching, beetling, dyeing, calendering, finishing, hooking, lap-

ping, and making up and packing any yarn or cloth of any material, or the dressing or finishing of lace, or any one or more of such processes, or any process incidental thereto, are or is carried on.

4. After the first day of January one thousand eight hundred and seventy-two, the principal Act and the schedule thereto (containing the permanent modifications) shall apply to print works and bleaching and dyeing works, in the same manner in all respects as if the word "factory" had been defined by section three of the principal Act to mean print works and bleaching and dyeing works, subject, nevertheless, to the following qualification:

The schedule to the principal Act shall be construed as if there were contained in that schedule the permanent modifications contained in the first schedule to this Act.

Provided that during the year beginning on the first day of January one thousand eight hundred and seventy-one the following regulations shall be observed in print works, in Turkey-red dyeing works, and in the process of open-air bleaching; (that is to say,)

1. Children shall be employed only for the same time and subject to the same conditions for and subject to which young persons exceeding thirteen years of age will be allowed to be employed therein after the first day of January one thousand eight hundred and seventy-two:
2. No woman and no female child or young person shall be employed at night except so far as she will be allowed to be so employed after the first day of January one thousand eight hundred and seventy-two:

And for the purpose of enforcing the said regulations the principal Act shall apply to such works and process in the same manner and subject to the same qualification as it will apply thereto after the first day of January one thousand eight hundred and seventy-two.

5. After the first of January one thousand eight hundred and seventy-two, the Acts mentioned in the first part of the third schedule to this Act shall be repealed, and the Act mentioned in the second part of the same schedule

shall be repealed to the extent in the third column of that schedule mentioned.

#### PART II.—FRUIT AND FISH PRESERVES.

6. The schedule to the Factory Acts Extension Act, 1867, and the schedule to the Workshop Regulation Act, 1867, shall be construed as if there were contained in each of those schedules the permanent modification contained in the second schedule to this Act.

#### FIRST SCHEDULE.

##### PERMANENT MODIFICATIONS.

1. Whereas the customs or exigencies of the trade require that in print works and bleaching and dyeing works male young persons of the age of sixteen years and upwards should be occasionally employed beyond the hours allowed by the Factory Acts: It shall be lawful for one of Her Majesty's Principal Secretaries of State, on due proof to his satisfaction that such customs or exigencies exist in the case of any print works, or bleaching and dyeing works, and that such occasional employment is not injurious to the health of such male young persons, from time to time, by order to be advertised in the London Gazette, or otherwise published in such manner as he may think fit, to give permission that in the case of any particular factory or class of factories male young persons of sixteen years of age and upwards may be employed for a period not exceeding fifteen hours on any one day:

Provided that—

- 1st. They are not so employed except between the hours of six in the morning and nine in the evening.
  - 2d. In addition to the time allowed under the Factory Acts for meals, they shall be allowed half an hour for a meal after the hour of six in the evening.
  - 3d. They are not so employed on the whole for more than seventy-two days in any period of twelve months, or for more than five consecutive days in any one week.
2. Where it is shown to one of Her Majesty's Principal Secretaries of State that, by reason of the nature of any process in any print works or bleaching and dyeing works, the time for the completion of such process cannot be accurately fixed, it shall be lawful for such Secretary of State from time to time, by order, to be advertised in the London Gazette or otherwise published in such manner as he may think fit, to give permission in the case of any factory or class

of factories that if, during the time limited by the order or during the continuance of the order, such process is in an incomplete state at the hour at which any child, young person, or woman employed in such process is required by this Act to cease work, such child, young person, or woman may be employed in such process for a period not exceeding thirty minutes beyond the said hour.

3. In bleaching and dyeing works time lost by the breakage of machinery or by reason of frost or snow may be recovered in the same manner and subject to the same conditions as time lost by stoppages from want of water or from too much water may be recovered under the Factory Acts.

4. So much of the Factory Acts as provides that all the young persons employed in a factory shall have the time for meals at the same period of the day shall not apply to male young persons employed in that part of any print works or bleaching and dyeing works in which the process of dyeing or open-air bleaching is carried on; and nothing in the Factory Acts shall be deemed to prevent in any such part any male young person, during the time allowed for meals to any other young person or to any child or woman, from being employed or allowed to remain in any room in which any manufacturing process is carried on, or to prevent, during the time allowed for meals to any male young person, any other young person or any child or woman from being employed or allowed to remain in any room in which any manufacturing process is carried on.

5. So much of the Factory Acts as provides that in any factory in which the labour of young persons is restricted to ten hours in any one day a child may be employed ten hours in any one day on three alternate days of every week, subject to the conditions specified in the said Factory Acts, shall extend to authorise, in print works and bleaching and dyeing works in which the labour of young persons is restricted to ten hours and a half in any one day, the employment of

children for ten hours and a half in any one day on three alternate days of every week, subject to the said conditions.

6. In the operation of bleaching by the open-air process, and in the process of Turkey-red dyeing, whenever emergencies arising from the state of the weather or the nature of the processes render it necessary, any woman or young person may, subject to the provisions of the principal Act and this Act, work according to the accustomed hours of the trade: Provided that—

- (1.) The hours of actual work do not exceed ten and a half hours in any one day:
- (2.) The hours of actual work do not exceed sixty hours in any one week, such week to be reckoned between midnight on Saturday night and midnight on the succeeding Saturday night:
- (3.) Reasonable intervals for meals, amounting in the whole to not less than the amount of time required for such intervals by the Factory Acts, shall be allowed to such woman or young person:
- (4.) No such woman or young person shall be so employed between seven o'clock in the evening and five o'clock next morning.

Provided that, for the purpose only of preventing any damage which may arise from spontaneous combustion in the process of Turkey-red dyeing, or from any extraordinary atmospheric influence in the process of open-air bleaching, women and young persons may be employed so far as is necessary for the purpose of preventing such damage.

7. Whereas the exigencies of the processes of Turkey-red dyeing require that the hours between which young persons, and women, or certain sets of them, may be employed, should be varied so as to correspond to the accustomed hours of the trade: It is hereby declared, that it shall be lawful for one of Her Majesty's Principal Secretaries of State from time to time, by order, to be advertised in the London Gazette, or otherwise published in such manner as he may think fit, to give permission that in the case of any particular factory or class of factories in which the process of Turkey-red dyeing is carried on, young persons and women, or any of them, or any sets of them, or of any of them, may, during the time specified in the order, or until further order, or on any day or days named in such order, be employed in such process between the hours specified in the order instead of between the hours prescribed by the Factory Acts; and, so far as respects the persons referred to in any such order, the Factory Acts shall, during the continuance of such order, be read as if the hours specified in the order were throughout such Acts

substituted for the hours prescribed by the Factory Acts: Provided that—

- (1.) No young person or woman shall be employed in pursuance of such order after half-past four o'clock in the afternoon of Saturday:
- (2.) Notice of the hours between which women and young persons are to be employed in pursuance of this modification, in such form as the inspectors of factories may direct, and signed by one of such inspectors, and the occupier or his agent, shall, during the continuance of the order, be kept hung up in such conspicuous place in the factory as may be required by one of such inspectors.

8. Where, under the modifications contained in any schedule to the principal Act or to this Act, any child, young person, or woman is employed otherwise than under an order of the Secretary of State, during any hours different from those of the Factory Acts, the day on which and the period during which he or she is so employed shall be entered by the occupier of the factory in a register, which shall be in such form as the Inspectors of Factories may direct, and shall be deemed to be a register within the meaning of the Factory Acts.

## SECOND SCHEDULE.

### PERMANENT MODIFICATION.

In the manufacture of preserves from fruit, and in the processes of preserving or curing fish, women may be employed between the first of June and the twenty-fourth day of December for a period not exceeding fourteen hours on any one day:

Provided that—

- 1st. They shall not be so employed except between the hours of six in the morning and eight in the evening, or in a factory in which permission has been given by the Secretary of State to work between the hours of seven in the morning and seven in the evening, or of eight in the morning and eight in the evening, then except between the hours of seven in the morning and nine in the evening, or eight in the morning and ten in the evening, as the case may be.
- 2d. In addition to the time allowed under the Factory Acts for meals, they shall be allowed half an hour for a meal after the hour of five in the evening.
- 3d. They shall not be so employed on the whole for more than ninety-six days

during the said period between the first day of June and the twenty-fourth day of December.

4th. They shall not be so employed for more than five consecutive days in any one week.

### THIRD SCHEDULE.

#### FIRST PART.

*Acts wholly repealed.*

Year and Chapter.	Title.
8 & 9 Vict. c. 29. -	An Act to regulate the labour of children, young persons, and women in the print works.
10 & 11 Vict. c. 70. -	An Act to amend the law as to the school attendance of children employed in print works.
23 & 24 Vict. c. 78. -	An Act to place the employment of women, young persons, and children in bleaching works and dyeing works under the regulations of the Factories Acts.
25 & 26 Vict. c. 8. -	An Act to prevent the employment of women and children during the night in certain operations connected with bleaching by the open-air process.
26 & 27 Vict. c. 38. -	An Act to amend the Act for placing the employment of women, young persons, and children in bleaching and dyeing works under the regulation of the Factories Acts.
27 & 28 Vict. c. 98. -	An Act for extending the provisions of "The Bleaching and Dyeing Works Act, 1860."

#### SECOND PART.

*Act partly repealed.*

Year and Chapter.	Title.	Extent of Repeal.
30 & 31 Vict. c. 103.	The Factory Acts Extension Act, 1867 - -	Paragraphs two and three of section five.

### CHAP. 63.

*The Wages Arrestment Limitation (Scotland) Act.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Wages of artificers not to be liable to arrestment for debts contracted after 1 January 1871.*
2. *Limitation of liability of wages to arrestment.*
3. *As to debts incurred before passing of Act.*
4. *Act not to affect decrees for alimentary allowances or for rates and taxes.*
5. *Short title.*

**An Act to limit Wages Arrestment in Scotland.**  
(9th August 1870.)

WHEREAS great evils have arisen through the arrestment of wages of labourers, manufacturers, artificers, and other workpeople, and also by the provisions relating to such arrestment in the Act first of Victoria, chapter forty-one, and it is desirable to remedy these evils :

Be it hereby enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same :

1. That from and after the first day of January one thousand eight hundred and seventy-one the wages of all labourers, farm servants, manufacturers, artificers, and workpeople shall cease to be liable to arrestment for debts contracted subsequent to the passing of this Act, save as herein-after excepted.

2. If the amount of wages earned exceeds twenty shillings per week, any surplus above that amount shall still be liable to arrestment as before the passing of this Act, but the expense or cost of any such arrestment shall not be charge-

able against the debtor unless in virtue of such arrestment the arresting creditor shall recover a sum larger than the amount of such expense or cost.

3. No arrestment of wages shall hereafter attach more than the amount of any surplus above twenty shillings per week, unless it shall be stated on the face of the arrestment or indorsed thereon that the debt in respect of which it is used was incurred prior to the passing of this Act ; and such statement may be made by a memorandum on the arrestment subscribed by the officer executing the same.

4. This Act shall in no way affect arrestments in virtue of decrees for alimentary allowances or payments, or for rates and taxes imposed by law, but every arrestment used after the first day of January one thousand eight hundred and seventy-one for such alimentary allowances or payments, or for rates and taxes imposed by law, shall set forth the nature of the debt for which it has been used, otherwise the same shall not be effectual.

5. This Act may be cited as "The Wages Arrestment Limitation (Scotland) Act."

CHAP. 64.

*The Petty Sessions Clerk (Ireland) Act, 1858, Amendment Act, 1870.*

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Order for amalgamation of districts may be rescinded.*

**An Act to amend the Petty Sessions Clerk (Ireland) Act, 1858.**  
(9th August 1870.)

WHEREAS it is expedient to amend the Petty Sessions Clerk (Ireland) Act, 1858 :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as "The Petty Sessions Clerk (Ireland) Act, 1858, Amendment Act, 1870."

2. Where any order has been made by the Lord Lieutenant under the provisions of the said Petty Sessions Clerk (Ireland) Act, 1858, that two or more petty sessions districts shall be served by one and the same person as clerk, and if after the making of the same the justices at quarter sessions for the division of the county in which such districts, or any of the same, are situate, shall represent to the Lord Lieutenant that the service of such districts by one clerk is inconvenient, the Lord Lieutenant may rescind the said order by notice to be published in the Dublin Gazette, and to be notified to the clerk of the peace of the county in which the said districts are situate, by the chief or under secretary to the Lord Lieutenant, and thereupon such order shall be null and void.



## CHAP. 65.

*The Larceny (Advertisements) Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Definition of "newspaper."*
3. *Limitation of actions for advertisements of reward for return of stolen property.*
4. *Stay of proceedings in action brought before passing of the Act.*

**An Act to amend the Law relating to Advertisements respecting Stolen Goods.**  
(9th August 1870.)

WHEREAS under section one hundred and two of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-six, intituled "An Act to consolidate and amend the Statute Law of England and Ireland relating to Larceny and other similar offences," any person who prints or publishes advertisements for the return of stolen goods without questions being asked, or the like advertisements therein mentioned, forfeits the sum of fifty pounds to any person who will sue for the same by action of debt:

And whereas the provision in the said section has given occasion to many vexatious proceedings at the instance of common informers against printers and publishers of newspapers, and it is expedient to discourage the same:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as The Larceny (Advertisements) Act, 1870, and shall be construed as one with the recited Act, which may be cited as The Larceny Act, 1861, and that Act and this Act may be cited together as the Larceny Acts, 1861 and 1870.

2. In this Act the term "newspaper" means a newspaper as defined for the purposes of the Acts for the time being in force relating to the carriage of newspapers by post.

3. Every action against the printer or publisher of a newspaper to recover a forfeiture under section one hundred and two of The Larceny Act, 1861, shall be brought within six months after the forfeiture is incurred, and no such action against the printer or publisher of a newspaper shall be brought unless the assent in writing of Her Majesty's Attorney General or Solicitor General for England, if the action is brought in England, or for Ireland, if the action is brought in Ireland, has been first obtained to the bringing of such action.

4. Where any action has been brought before the passing of this Act against the printer or publisher of any newspaper for the recovery of any forfeiture incurred under section one hundred and two of The Larceny Act, 1861, the defendant in such action may apply to a judge, if the action is brought in England, of one of the Superior Courts at Westminster, and if the action is brought in Ireland, of one of the Superior Courts at Dublin, and such judge upon such application and upon proof that sufficient notice of the application has been given to the plaintiff or his attorney, shall order that upon payment by the defendant of the plaintiff's costs out of pocket, incurred in the action up to the time of the application, the action shall be discontinued, or (if the forfeiture was incurred within six months before the passing of this Act) shall be discontinued unless the plaintiff before the expiration of six months from the date of the forfeiture obtain the assent required by this Act to the bringing of such action, and shall be stayed until such assent is obtained.

## CHAP. 66.

*The British Columbia Government Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Interpretation of term "Governor."*
3. *Power to Her Majesty by Order in Council to constitute a Legislature.*
4. *Power to Her Majesty to delegate certain powers to the Governor of British Columbia.*

An Act to make further provision for  
the Government of British Columbia.  
(9th August 1870.)

WHEREAS in pursuance of the powers vested in Her Majesty by an Act passed in the session holden in the twenty-first and twenty-second years of Her Majesty's reign, intituled "An Act "to provide for the Government of British Columbia," Her Majesty did, by an Order in Council, bearing date the eleventh day of June one thousand eight hundred and sixty-three, constitute a Legislature consisting of the Governor and a Legislative Council in the said colony of British Columbia :

And whereas by the British Columbia Act of 1866 Vancouver Island was united to British Columbia and made subject to the said Legislature, and the number of the Legislative Council was increased so as to provide for the representation of Vancouver Island :

And whereas it is expedient to alter the constitution of the said Legislature :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as "The British Columbia Government Act, 1870."

2. For the purposes of this Act, the term "Governor" shall mean the officer for the time being administering the government of British Columbia.

3. Her Majesty may, by any Order or Orders in Council, revoke the said recited Order in Council, and may from time to time make, and when made revoke or alter, Orders in Council for constituting a Legislature consisting of the Governor and a Legislative Council for the said colony, and may by any such Order make such provisions and regulations respecting the constitution, powers, and proceedings of the said Legislature or either branch thereof, the number, the appointment, and election of the members of the Legislative Council, their tenure of office, and generally in respect to such Legislature or either branch thereof, as may seem to her expedient.

4. Her Majesty may from time to time, by any such Order or Orders in Council, empower the Governor of the said colony, with or without any conditions or restrictions, by proclamation, to determine the qualification of electors and of elective members of the Legislative Council, and to make provision for the division of the said colony into convenient electoral districts; for the registration of persons qualified to vote, and the compilation and revision of lists of all such persons; for the appointment of returning officers; for the issuing, executing, and returning the necessary writs for the election of members to the said Legislative Council; for taking the poll thereat, and determining the validity of all disputed returns; and generally for securing the orderly, effective, and impartial conduct of such elections, and to revoke any proclamation previously made.

## CHAP. 67.

*The Army Enlistment Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Twelve years the limit of enlistment.*
3. *Terms of enlistment.*
4. *Change of service.*

5. *In imminent national danger, Her Majesty may continue soldiers in army service.*
6. *Enlistment for general service, &c.*
7. *Effect of attachment to a regiment.*
8. *Re-engagement of soldiers.*
9. *Limit of numbers.*
10. *Continuance in Her Majesty's service after twenty-one years therein.*
11. *Prolongation of enlistment in certain cases.*
12. *Rules for reckoning service.*
13. *Discharge on completion of service.*
14. *Provisions in Reserve Force Act, 1867, and Militia Reserve Act, 1867, as to calling reserve and militia into active service, extended to cases of imminent national danger.*
15. *Soldiers who have exceeded the first term of their engagement may be enrolled in reserve.*
16. *Power of Secretary of State to issue orders and forms.*
17. *Saving of provisions of Acts relating to enlistment.*
18. *Application of Act to men under Army Enlistment Act, 1867.*
19. *Training of first class of reserve force.*
20. *Service of notices on reserve force.*
21. *Repeal.*
22. *Definition of Secretary of State.*

**An Act to shorten the time of Active Service in the Army, and to amend in certain respects the Law of Enlistment.**  
(9th August 1870.)

WHEREAS it is expedient to shorten the period of army service of soldiers enlisted to serve in Her Majesty's army, and to establish a reserve force which may be called into active service in a time of emergency; and also to amend in certain respects the law of enlistment in Her Majesty's army:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as "The Army Enlistment Act, 1870."

2. From and after the passing of this Act, no person shall be enlisted for the first term of his engagement to serve Her Majesty as a soldier for a longer period than twelve years, to be reckoned from the day on which the recruit is attested for service.

3. Enlistments under this Act shall be as follows: either

- (1.) For the whole of the said period, in army service; or
- (2.) For a portion of the said period, to be fixed from time to time by the Secretary of State and specified in the attestation paper, in army service, and for the residue thereof in the first class of the reserve force established under the provisions of the Reserve Force Act, 1867; but nothing in this clause shall interfere with the power of

Her Majesty to enlist men for a less period than twelve years in army service alone.

4. The Secretary of State may from time to time by general or special regulations vary the conditions of service so as to permit a soldier who has served not less than three years in army service, with such soldier's free assent, either

- (1.) To enter the reserve force at once for the residue unexpired of his term of twelve years; or
- (2.) To extend his army service for the residue unexpired of his term of twelve years.

5. It shall be lawful for Her Majesty, in case of imminent national danger or of great emergency, the occasion being first communicated to Parliament if Parliament be then sitting, or declared by proclamation, in pursuance of an order of Her Majesty in Council, if Parliament be not then sitting, to direct that any soldier enlisted under this Act shall at any time within the period of twelve years for which he has been enlisted continue in or re-enter upon army service for such periods from time to time, not exceeding in the whole the unexpired residue of the term of his enlistment, as Her Majesty may determine; and upon such order being issued every soldier to whom it applies shall be bound to obey the same in the same manner as if it had formed part of this Act. When any such soldier is directed to re-enter upon army service under this section, it shall be lawful for the military authorities to attach him to any regiment of that arm or branch of the service in which he has previously served.

6. From and after the passing of this Act, all enlistments, except as herein-after mentioned, shall be for general service; and it shall be lawful for the military authorities to post any recruit so

enlisted to any regiment or corps, and at any time within fifteen months after his attestation to direct him to be attached to any regiment or corps; but the Secretary of State may, from time to time, by any general or special regulations, permit recruits to be enlisted for particular regiments, and in such case they shall at once be attached to such regiments.

7. When a soldier has been attached to a regiment or corps he shall serve therein for the period of his army service; provided that it shall be lawful for the military authorities to transfer him to any regiment or corps of the same arm or branch of the service serving in the United Kingdom, in the following cases;

- (1.) When he has been invalided from foreign service;
- (2.) When, in the case of his regiment or corps being ordered on foreign service, he is either unfit for foreign service by reason of his health, or is within two years of the termination of the period of his army service, or of his enlistment, or of such re-engagement as is herein-after mentioned;

and to a regiment or corps of the same arm or branch of the service serving abroad, when, in the case of his regiment or corps being on foreign service, and ordered to return home, he has more than two years to serve previous to the termination of the period of his army service: Provided that the power of transfer in this case shall not apply to any man who enlists for the whole of the period of twelve years in army service, or to any man who, having enlisted for a portion of the said period in army service, has extended his army service for the residue unexpired of his term of twelve years, or to any man who has re-engaged.

Provided also, that nothing in this section contained shall affect the powers of transferring soldiers contained in any Act for punishing mutiny and desertion, and for the better payment of the army and for their quarters, for the time being in force.

8. Any soldier

- (1.) Who being in army service has commenced the twelfth year from his first enlistment, or
- (2.) Who being within three years of the expiration of his first enlistment and in army service has been ordered but has not yet proceeded on foreign service,

may, with the approval of his commanding officer or of some other competent military authority, and subject to such regulations as may from time to time be made by the Secretary of State, be re-engaged for such further period of army service as will make up a total continuous period of

twenty-one years in Her Majesty's service, reckoning from the time of his first enlistment.

9. The number of men serving in the militia reserve under the Militia Reserve Act, 1867, and in the army reserve, first class, under the Reserve Force Act, 1867, and this Act, shall not exceed in the whole sixty thousand.

10. Any soldier who has completed a total period of twenty-one years service may give notice to his commanding officer of his desire to continue in Her Majesty's service; and if his commanding officer or any other competent military authority approve of such application he may be continued as a soldier in the same manner in all respects as if his term of service were still unexpired, except that it shall be lawful for him to claim his discharge at the expiration of any period of three months after he has given notice to his commanding officer of his wish to be discharged.

11. Any soldier whose period of army service or whose whole period of enlistment, as the case may be, expires while a state of war exists between Her Majesty and any foreign power, or while he is serving on foreign service, or on any colonial or Indian station, may be detained and his service may be prolonged for such further period not exceeding twelve months as the Secretary of State or the commanding officer at the station may direct; but at the expiration of such prolonged service, or sooner, if the said Secretary of State or commanding officer see fit, such soldier shall be transferred to the reserve force or discharged, as the case may be, and if serving abroad he shall, unless he desires to remain at the place where he is serving, be sent home at the public charge, with all convenient speed, and after his arrival he shall be transferred to the reserve force or discharged, as the case may be.

12. In reckoning the service of a soldier for the purposes of discharge under the provisions of this Act, all periods of time shall be excluded during which he has been absent from his duty for any of the following causes; that is to say,

1. Imprisonment; provided that imprisonment shall not for the purposes of this section include detention in respect of any trial which results in the acquittal or discharge of the prisoner.
2. Desertion.
3. Absence without leave exceeding five days.
4. Detention as a prisoner of war, unless it appear to the satisfaction of a court-martial to be summoned on his rejoining Her Majesty's service that he was not taken prisoner through his own wilful

neglect of duty, and that he rejoined as soon as he could and ought to have done.

13. Every soldier who has completed his period of service or of army service, according to the provisions of this Act, shall be entitled to his discharge, or transfer to the reserve force, as the case may be, unless at the time of the expiration of such period of service he stands charged with the commission of any offence, in which case his discharge or transfer to the reserve force shall be deferred, until he has undergone his trial and any punishment awarded to him.

14. Whereas by the Reserve Force Act, 1867, section ten, it is provided that in case of actual invasion or imminent danger thereof, or in case a state of war exists between Her Majesty and any foreign power, it shall be lawful for Her Majesty by proclamation to direct that the reserve force by that Act constituted, or such part thereof as Her Majesty may think fit, be called out on permanent service:

And whereas by the Militia Reserve Act, 1867, section eight, it is provided that whenever a state of war exists between Her Majesty and any foreign power, and in all cases of actual invasion or imminent danger thereof, it shall be lawful for Her Majesty to order that the men enlisted under the said Act or such of them as Her Majesty may judge necessary shall enter upon army service:

And whereas it is expedient to assimilate the conditions under which men of the reserve force established under the said Acts of one thousand eight hundred and sixty-seven may be called to enter upon army service to those under which men enlisted under this Act may be directed to continue in or re-enter upon army service:

Be it enacted as follows:

1. Section ten of the Reserve Force Act, 1867, shall be construed as if the words "in case of imminent national danger or of great emergency, the occasion being first communicated to Parliament if Parliament be then sitting, or declared by proclamation," were inserted in the said section in place of the words "in case of actual invasion or imminent danger thereof, or in case a state of war exists between Her Majesty and any foreign power:"
2. Section eight of the Militia Reserve Act, 1867, shall be construed as if the words "in case of imminent national danger or of great emergency, the occasion being first communicated to Parliament if Parliament be then sitting, or declared by proclamation," were inserted in the said section in place of the words "when-

" ever a state of war exists between Her Majesty and any foreign power, and in all cases of actual invasion or imminent danger thereof."

Provided that nothing in this section contained shall affect any person enlisted under the said Acts of one thousand eight hundred and sixty-seven before this Act comes into operation, except with his own consent.

15. From and after the passing of this Act, any soldier who is serving or has served in any of Her Majesty's regular forces, and whose service (or past service) has exceeded the first term of his enlistment, may be enrolled to serve in the first class of the reserve force established under the Army Reserve Act, 1867; provided that no such soldier is when so enrolled above the age of thirty-four years.

16. The Secretary of State may from time to time issue such orders and forms for enlisting recruits and for otherwise carrying into effect this Act as he thinks expedient, and any orders and forms so issued shall be of the same force as if expressly enacted in this Act.

17. All provisions of any Act of Parliament for the time being in force relating to the enlistment of recruits for Her Majesty's army shall, in so far as they are not inconsistent with this Act, be deemed to be incorporated with this Act, and to apply accordingly to any enlistments made in pursuance of this Act.

18. This Act shall apply to men serving for the first term of their enlistment under the Act of the session holden in the tenth and eleventh years of Her Majesty's reign, chapter thirty-seven, intituled "An Act for limiting the term of service in the army," and the Army Enlistment Act, 1867, in the same manner as if they had been enlisted under this Act; provided that this Act shall not be applied to any man enlisted under such last-mentioned Act, except with his own consent.

19. The Secretary of State may from time to time make regulations for the training of persons serving in pursuance of this Act in the first class of the reserve force in such manner and during such periods as he may consider to interfere as little as possible with their ordinary trades or occupations, and as do not exceed in any one year twelve whole days or twenty drills.

20. The Secretary of State may require the chief officer of police in every district in the United Kingdom to cause to be served within his district any notice the Secretary of State may desire to be served on any members of the reserve

forces in such district; and all officers and men of every police force shall conform to the orders of the said Secretary of State in relation to the service of such notices given through such officer.

"The reserve forces" shall mean the army reserve, the militia reserve, and any other reserve forces as defined by Act of Parliament, also the militia, yeomanry, volunteers, and any other land forces whatever within the United Kingdom, serving or liable to be called upon to serve

Her Majesty in any military capacity and not forming part of the regular army.

21. From and after the passing of this Act, section eight of the Reserve Force Act, 1867, and all enactments inconsistent with this Act, shall be repealed.

22. The Secretary of State shall mean any one of Her Majesty's Principal Secretaries of State.

---

## CHAP. 68.

### *Militia Acts Amendment.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Amendment of the Acts relating to the Militia in cases of emergency.*
2. *Parliament to be summoned within ten days.*

An Act to amend the Acts relating to the Militia of the United Kingdom.  
(9th August 1870.)

WHEREAS under the Acts in force concerning the Militia of the United Kingdom the Militia can be drawn out and embodied in England and Scotland respectively only in case of actual invasion or of imminent danger of invasion, or in case of rebellion or insurrection, or in case of a state of war existing between Her Majesty and a foreign power; and in Ireland only in case of actual invasion, rebellion, or insurrection, or of immediate danger thereof, or in case of a state of war existing between Her Majesty and a foreign power:

And whereas under the Acts aforesaid additional Militia can be raised only in case of actual invasion or imminent danger thereof:

And whereas it is expedient to amend the aforesaid Acts as herein-after mentioned:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In case of imminent national danger or of great emergency, the occasion being first communicated to Parliament, if Parliament be then sitting, or declared by proclamation in pursuance of an Order of Her Majesty in Council if Parlia-

ment be not then sitting, it shall be lawful for Her Majesty and for the Lord Lieutenant or other chief governor or governors of Ireland respectively to cause the whole or any part of the respective Militias of England, Scotland, and Ireland to be drawn out and embodied, or to cause additional Militia to be raised for England, Scotland, or Ireland in the manner by the said Acts authorised in the cases mentioned in the said Acts; and all the provisions of the said Acts and of any Acts amending the said Acts applicable to the drawing-out, embodying, and raising such respective Militias, and to such Militias when so drawn out, embodied, and raised, shall apply in the case of the Militias to be drawn out, embodied, or raised in pursuance of the provisions of this Act; but this Act shall not apply to any man enlisted under any of the said Acts without his own consent.

2. Whenever in pursuance of the provision of this Act Her Majesty causes any Militia to be drawn out, embodied, or raised as aforesaid, if Parliament be then separated by such adjournment or prorogation as will not expire within ten days, a proclamation shall be issued for the meeting of Parliament within ten days, and Parliament shall accordingly meet and sit upon such day as may be appointed by such proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to such day.

## CHAP. 69.

*The Statute Law Revision Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Enactments in schedule repealed, but not to affect validity of certain Acts.*
2. *Short title.*  
*Schedule.*

An Act for further promoting the revision of the Statute Law by repealing certain enactments that have ceased to be in force or are consolidated by certain Acts of the present Session.  
(9th August 1870.)

WHEREAS the enactments described in the schedule to this Act have ceased to be in force, or on the commencement of Acts of the present session relating to the National Debt and to Forgery will cease to be in force, and, with a view to the revision of the Statute Law, and particularly to the preparation of the revised edition of the Statutes now in progress, it is expedient that the same enactments be expressly repealed:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The enactments described in the schedule to this Act are hereby repealed, subject to the exceptions in the schedule mentioned:

Provided that this Act shall not affect the vali-

dity, invalidity, effect or consequences of any letter or power of attorney or other instrument or thing already made, done or suffered,—or any right or title already acquired or accrued, or any remedy or proceeding in respect thereof,—or any release or discharge of or from any debt, penalty, claim or demand,—or any indemnity,—or the proof of any past act or thing;

and the repeal by this Act of any enactment shall not affect any Act in which such enactment has been applied, incorporated or referred to;

nor shall such repeal affect any jurisdiction or procedure given or authorized by any Act hereby repealed with reference to questions arising in consequence of any commutation or payment under such Act, or affect any protection conferred by such Act in reference to any act, matter or thing done by any trustee, executor, administrator or other person;

nor shall such repeal affect any right to any hereditary revenues of the Crown, or affect any charges thereupon, or prevent any enactment from being put in force for the collection of any such revenues, or otherwise in relation thereto.

2. This Act may be cited as the Statute Law Revision Act, 1870.

## SCHEDULE.

9 Gul. 3. c. 3.	An Act to give further time for the administering of oaths relating to tallies & orders and for the easier dispatch of the publick business in the Exchequer & in the Bank of England.
1 Geo. 1. Stat. 1. c. 2.	An Act for rectifying mistakes in the names of the Commissioners for the Land Tax for the year one thousand seven hundred and fourteen; and for raising so much as is wanting to make up the sum of fourteen hundred thousand pounds, intended to be raised by a lottery for the publick service in the said year.
1 Geo. 1. Stat. 2. c. 12.	An Act the title of which begins with the words,—An Act for enlarging the fund of the governor and company of the Bank of England relating to Exchequer-Bills,—and ends with the words,—and for other purposes therein mentioned.
c. 19.	An Act for raising nine hundred and ten thousand pounds for publick services, by sale of annuities, after the rate of five pounds per centum per annum, redeemable by Parliament; and to authorize a treaty concerning private rights claimed by the proprietors of the sugar-houses in Scotland.

- c. 21. *An Act the title of which begins with the words*,—An Act for enlarging the capital stock and yearly fund of the South-Sea Company,—*and ends with the words*,—and for appropriating several supplies granted to His Majesty.
- 3 Geo. 1. c. 7. *An Act the title of which begins with the words*,—An Act for redeeming the duties and revenues which were settled to pay off principal and interest on the orders made forth on four Lottery Acts,—*and ends with the words*,—and for taking off the duties on linseed imported, and British linen exported.
- c. 8. *An Act the title of which begins with the words*,—An Act }  
in part. for redeeming several funds,—*and ends with the words*,—*and for other purposes in this Act mentioned* } in part; namely,—  
Sections one to thirty-seven, forty to forty-four, forty-six to fifty-two, and section fifty-four to end of Act.
- c. 9. *An Act the title of which begins with the words*,—An Act for redeeming the yearly fund of the South-Sea Company,—*and ends with the words*,—time and manner thereby prescribed.
- 4 Geo. 1. c. 10. An Act for making the dividend of subscribed lottery-annuities, and other annuities established by several Acts of Parliament payable half-yearly at the Bank of England.
- 5 Geo. 1. c. 3. An Act for applying certain overplus monies, and further sums to be raised, as well by way of a lottery, as by loans, towards paying off and cancelling exchequer-bills, and for lessening the present great charge in relation to those bills; and for circulating and exchanging for ready money the residue of the same bills for the future.
- c. 9. An Act for continuing certain duties upon coals and culm, and for establishing certain funds to raise money, as well to proceed in the building of new churches, as also to compleat the supply granted to His Majesty; and to reserve the overplus monies of the said duties for the disposition of Parliament; and for more effectual suppressing private lotteries.
- c. 19. *An Act the title of which begins with the words*,—An Act for redeeming the fund appropriated for payment of the lottery-tickets,—*and ends with the words*,—and to limit times for prosecutions upon bonds for exporting cards and dice.
- 6 Geo. 1. c. 4. *An Act the title of which begins with the words*,—An Act for enabling the South-Sea Company,—*and ends with the words*,—demand at or near the exchequer.
- c. 10. *An Act the title of which begins with the words*,—An Act for making forth new exchequer-bills,—*and ends with the words*,—and for circulating and exchanging upon demand the said bills at or near the exchequer.
- c. 11. *An Act the title of which begins with the words*,—An Act }  
in part. for laying a duty upon wrought plate,—*and ends with the words*,—senna imported in the year one thousand seven hundred and sixteen - - - } in part; namely,—  
Sections four to forty, and forty-two to end of Act.
- 7 Geo. 1. Stat. 1. An Act to enable the South-Sea Company to ingraft part of their capital  
c. 5. stock and fund into the stock and fund of the Bank of England, and another part thereof into the stock and fund of the East-India Company; and for giving further time for payments to be made by the said South-Sea Company, to the use of the publick.
- c. 27. *An Act the title of which begins with the words*,—An Act for raising }  
in part. a sum not exceeding five hundred thousand pounds,—*and ends with the words*,—and for making good a deficiency to the East-India Company - - - } :—  
Except section nineteen.
- Stat. 2. An Act for making several provisions to restore the publick credit, which suffers by the frauds and mismanagements of the late directors of the South-Sea Company and others.



- 8 Geo. 1. c. 20. *An Act the title of which begins with the words*,—An Act for paying off and cancelling one million of exchequer-bills,—*and ends with the words*,—and for ascertaining the duties on pictures imported.
- c. 21. *An Act the title of which begins with the words*,—An }  
in part. Act to enable the South-Sea Company,—*and ends* } in part; namely,—  
with the words,—touching payment of ten per cen- }  
tum therein mentioned - - - }
- c. 22. Sections one to three, five, six, eight, nine, section eleven from “and that the part or parts” to end of that section, and section sixteen to end of Act.
- 9 Geo. 1. c. 5. An Act to prevent the mischiefs by forging powers to transfer such stocks, or to receive such annuities or dividends as are therein mentioned, or by fraudulently personating the true owners thereof; and to rectify mistakes of the late managers for taking subscriptions for increasing the capital stock of the South-Sea Company, and in the instruments founded thereupon.
- c. 6. An Act for redeeming certain annuities, now payable by the cashier of the Bank of England, at the rate of five pounds per centum per annum.
- c. 12. *An Act the title of which begins with the words*,—An Act for reviving and adding two millions to the capital stock of the South-Sea Company,—*and ends with the words*,—and for continuing, for one year longer, the provision formerly made against requiring special bail in actions or suits upon such contracts as are therein mentioned.
- 10 Geo. 1. c. 5. An Act for the more easy assigning or transferring certain redeemable annuities, payable at the Exchequer, by endorsements on the standing orders for the same.
- 11 Geo. 1. c. 9. *An Act the title of which begins with the words*,—An }  
in part. Act for continuing the several annuities,—*and ends* } in part; namely,—  
with the words,—bank-bills or notes - - - }
- c. 17. Section six.
- 12 Geo. 1. c. 2. An Act for redeeming the annuities of twenty-five thousand pounds per annum, charged on the civil list revenues, by an Act of the seventh year of His Majesty’s reign; and for discharging the debts and arrears due from His Majesty to his servants, tradesmen, and others.
- in part. An Act for granting to His Majesty the sum of one }  
million, to be raised by way of a lottery - - - } in part; namely,—  
Section two to end of Act.
- 13 Geo. 1. c. 3. *An Act the title of which begins with the words*,—An Act for redeeming sundry annuities transferrable at the Bank of England,—*and ends with the words*,—the sufferers at Nevis and St. Christopher’s, as far as the same will extend.
- c. 21. *An Act the title of which begins with the words*,—An Act for granting to His Majesty the sum of three hundred and seventy thousand pounds,—*and ends with the words*,—since made perpetual.
- 1 Geo. 2. Stat. 2. *An Act the title of which begins with the words*,—An }  
c. 8. Act for granting an aid to His Majesty,—*and ends* } in part; namely,—  
in part. with the words,—and for applying the arrears of His }  
late Majesty’s civil list revenues - - - }
- Sections one to four, six, seven, nine to eleven, section twelve from “and from and after” to end of that section, section fourteen, and section sixteen to end of Act.

- 2 Geo. 2. c. 3.  
in part. } An Act for raising the sum of one million two hundred and fifty thousand pounds by sale of annuities to the Bank of England, after the rate of four pounds per centum per annum, redeemable by Parliament; and for applying the produce of the sinking fund } in part; namely,—  
Sections one to four, six, eight to ten, section eleven from “and from and after” to end of that section, section thirteen, and section fifteen to end of Act.
- 3 Geo. 2. c. 16. *An Act the title of which begins with the words,—An Act for raising five hundred and fifty thousand pounds,—and ends with the words,—by the receiver general for the county of Salop.*
- 4 Geo. 2. c. 5. An Act for the further application of the sinking fund, by paying off one million of South-Sea annuities.
- c. 9. An Act for raising one million two hundred thousand pounds by annuities and a lottery, in manner therein mentioned, and for appropriating the supplies granted in this session of Parliament, and for making forth duplicates of exchequer bills, lottery tickets and orders lost, burnt or otherwise destroyed.
- 5 Geo. 2. c. 17. An Act for the further application of the sinking fund, by paying off one million of South-Sea stock; and for appropriating the supplies granted in this session of Parliament; and for making forth duplicates of exchequer hills, lottery tickets and orders, lost, burnt or otherwise destroyed.
- 6 Geo. 2. c. 28. An Act for the converting a further part of the capital stock of the South-Sea Company into annuities redeemable by Parliament, and for settling the remaining part of the said stock in the said Company.
- 9 Geo. 2. c. 34. *An Act the title of which begins with the words,—An Act for enabling His Majesty to borrow,—and ends with the words,—and for appropriating the supplies granted in this session of Parliament.*
- 10 Geo. 2. c. 17. *An Act the title of which begins with the words,—An Act for repealing the present duty on sweets,—and ends with the words,—orders lost, burnt, or otherwise destroyed.*
- 11 Geo. 2. c. 27. *An Act the title of which begins with the words,—An Act for granting to His Majesty the sum of two millions,—and ends with the words,—and for the further appropriating the supplies granted in this session of Parliament.*
- 15 Geo. 2. c. 13.  
in part. } An Act for establishing an agreement with the governor and company of the Bank of England, for advancing the sum of one million six hundred thousand pounds, towards the supply for the service of the year one thousand seven hundred and forty-two } in part; namely,—  
Sections one to five and nine to eleven.
- c. 19. An Act for granting to His Majesty the sum of eight hundred thousand pounds, to be raised by annuities transferrable at the Bank of England; and for ascertaining the customs and duties upon quicksilver taken as prize during the present war; and for the further appropriating the supplies granted in this session of Parliament.
- 16 Geo. 2. c. 12. *An Act the title of which begins with the words,—An Act for repealing the several rates and duties upon victuallers and retailers of beer and ale,—and ends with the words,—duties for licences.*
- c. 13. An Act for raising by annuities and a lottery in manner therein mentioned, the sum of one million eight hundred thousand pounds, at three pounds per centum per annum, for the service of the year one thousand seven hundred and forty-three.
- 17 Geo. 2. c. 18. An Act for raising by annuities, and a lottery, in manner therein mentioned, the sum of one million eight hundred thousand pounds, at three pounds per centum per annum, for the service of the year one thousand seven hundred and forty-four.

18 Geo. 2. c. 9.	An Act for granting to His Majesty several additional duties upon all wines imported into Great Britain; and for raising a certain sum of money by annuities, and a lottery, in manner therein mentioned, to be charged on the said additional duties.
19 Geo. 2. c. 6. in part.	An Act for establishing an agreement with the governor and company of the Bank of England, for cancelling certain exchequer bills upon the terms therein mentioned; and for obliging them to advance the sum of one million upon the credit of the land-tax and malt duties, granted to His Majesty for the service of the year one thousand seven hundred and forty-six } in part; namely,— Sections one, two, four, six, seven, nine, ten, and section fifteen to end of Act.
c. 12.	<i>An Act the title of which begins with the words,</i> —An Act for granting to His Majesty several rates and duties upon glass, and upon spirituous liquors, <i>—and ends with the words,</i> —last session of Parliament.
20 Geo. 2. c. 3.	An Act for repealing the several rates and duties upon houses, windows and lights; and for granting to His Majesty other rates and duties upon houses, windows or lights; and for raising the sum of four millions four hundred thousand pounds by annuities, to be charged on the said rates or duties.
c. 10.	An Act for granting to His Majesty several rates and duties upon coaches, and other carriages therein mentioned; and for raising the sum of one million, by way of lottery, to be charged upon the said rates and duties.
21 Geo. 2. c. 2.	<i>An Act the title of which begins with the words,</i> —An Act for granting to His Majesty a subsidy of poundage, <i>—and ends with the words,</i> —as enacts that prize goods and merchandize may be exported without paying any duty of custom or excise for the same.
22 Geo. 2. c. 23.	An Act to charge the sinking fund with the payment of annuities in discharge of navy, victualling and transport bills, and ordnance debentures, to the amount therein mentioned.
23 Geo. 2. c. 1. in part.	An Act for reducing the several annuities which now carry an interest } after the rate of four pounds per centum per annum, to the several } :— rates of interest therein mentioned } Except so far as relates to interest on the debt from the public to the governor and company of the Bank of England.
c. 16.	An Act for granting to His Majesty the sum of one million, to be raised by annuities at three pounds per centum per annum, and charged on the sinking fund, transferrable at the Bank of England.
c. 22. in part.	An Act for giving further time to the proprietors of annuities, after the rate of four pounds per centum per annum, to subscribe the same } in the manner, and upon the terms therein mentioned; and for } :— redeeming such of the said annuities as shall not be so subscribed; } and for empowering the East India Company to raise certain sums } by transferrable annuities } Except so far as relates to interest on the debt from the public to the governor and company of the Bank of England.
24 Geo. 2. c. 2.	An Act for granting to His Majesty the sum of two millions one hundred thousand pounds, to be raised by annuities and a lottery, and charged on the sinking fund, redeemable by Parliament.
c. 4. in part.	<i>An Act the title of which begins with the words,</i> —An Act for enabling His Majesty to raise the several sums of money therein mentioned, <i>—and ends with the words,</i> —annuities omitted to be subscribed, pursuant to two Acts of the last session of Parliament } :— Except sections twenty-one and twenty-two,

c. 11.	An Act for reducing the interest upon the capital stock of the South Sea Company from the time and upon the terms therein mentioned; and for preventing of frauds committed by the officers and servants of the said Company.
25 Geo. 2. c. 25.	<i>An Act the title of which begins with the words,</i> —An Act for granting to His Majesty a certain sum of money therein mentioned,— <i>and ends with the words,</i> —and for the further appropriating the supplies granted in this session of Parliament.
c. 27.	An Act for converting the several annuities therein mentioned into several joint stocks of annuities, transferrable at the Bank of England, to be charged on the sinking fund; and also for consolidating the several other annuities therein mentioned, into several joint stocks of annuities, transferrable at the South-Sea House.
26 Geo. 2. c. 1.	<i>An Act the title of which begins with the words,</i> —An Act for continuing and granting to His Majesty certain duties upon malt, mum, cyder and perry,— <i>and ends with the words,</i> —into the joint stock of annuities therein mentioned.
c. 23.	<i>An Act the title of which begins with the words,</i> —An Act for granting to His Majesty a certain sum of money therein mentioned, out of the sinking fund,— <i>and ends with the words,</i> —and for other purposes therein mentioned.
28 Geo. 2. c. 15.	An Act for granting to His Majesty the sum of one million, to be raised by a lottery.
29 Geo. 2. c. 7.	An Act for granting to His Majesty the sum of two millions, to be raised by way of annuities and a lottery, and charged on the sinking fund, redeemable by Parliament; and for extending to Ireland the laws made in this kingdom against private and unlawful lotteries.
30 Geo. 2. c. 19.	<i>An Act the title of which begins with the words,</i> —An Act for granting to His Majesty several rates and duties upon indentures, leases, bonds, and other deeds,— <i>and ends with the words,</i> —duties omitted to be paid for the indentures and contracts for clerks and apprentices.
31 Geo. 2. c. 22. in part.	An Act for granting to His Majesty several rates and duties upon offices and pensions; and upon houses; and upon windows or lights; and for raising the sum of five millions by annuities, and a lottery, to be charged on the said rates and duties } in part; namely,— Sections eight, nine, and thirty-one to seventy-eight.
32 Geo. 2. c. 10.	<i>An Act the title of which begins with the words,</i> —An Act for granting to His Majesty a subsidy of poundage,— <i>and ends with the words,</i> —additional inland duty.
c. 22.	<i>An Act the title of which begins with the words,</i> —An Act for adding certain annuities,— <i>and ends with the words,</i> —on the produce of the said fund.
33 Geo. 2. c. 7. in part.	<i>An Act the title of which begins with the words,</i> —An Act for granting } to His Majesty several duties upon malt,— <i>and ends with the words,</i> — } :— orders, lost, burnt, or otherwise destroyed - - - } Except section sixteen.
c. 12.	<i>An Act the title of which begins with the words,</i> —An Act for adding certain annuities granted in the year one thousand seven hundred and fifty-nine,— <i>and ends with the words,</i> —not disposed of.
1 Geo. 3. c. 7.	An Act for granting to His Majesty an additional duty upon strong beer and ale; and for raising the sum of twelve millions, by way of annuities and a lottery, to be charged on the said duty; and for further encouraging the exportation of strong beer and ale.
2 Geo. 3. c. 9.	<i>An Act the title of which begins with the words,</i> —An Act for charging certain annuities,— <i>and ends with the words,</i> —and other orders lost, burnt, or otherwise destroyed.

- c. 10. An Act for raising by annuities, in manner therein mentioned, the sum of twelve millions, to be charged on the sinking fund; and for applying the surplus of certain duties on spirituous liquors, and also the monies arising from the duties on spirituous liquors, granted by an Act of this session of Parliament.
- 3 Geo. 3. c. 9. An Act for granting annuities to satisfy certain navy, victualling, and transport bills, and ordnance debentures; and for charging the payment of such annuities on the sinking fund; and making good the same to the said fund, in manner therein mentioned.
- c. 12. An Act for granting to His Majesty several additional duties upon wines imported into this kingdom, and certain duties upon all cyder and perry; and for raising the sum of three millions five hundred thousand pounds by way of annuities and lotteries, to be charged on the said duties.
- 4 Geo. 3. c. 18. *An Act the title of which begins with the words,*—An Act for charging on the sinking fund certain annuities,—*and ends with the words,*—annuities granted by an Act passed in the second year of His present Majesty's reign.
- c. 25. *An Act the title of which begins with the words,*—An Act for establishing an agreement with the governor and company of the Bank of England,—*and ends with the words,*—and the fraudulent personating the owners thereof.
- 5 Geo. 3. c. 16. An Act for altering the times of payment of certain annuities, established by two Acts made in the thirty-third year of the reign of His late Majesty, and in the second year of the reign of His present Majesty.
- c. 23. An Act for granting annuities, to be attended with a lottery, to satisfy and discharge certain navy, victualling, and transport bills; and for charging the payment of such annuities on the sinking fund.
- c. 42. An Act for redeeming one-fourth part of the joint stock of annuities established by an Act made in the third year of His present Majesty's reign, in respect of several navy, victualling, and transport bills, and ordnance debentures.
- 6 Geo. 3. c. 21. An Act for redeeming one-third part of the remainder of the joint stock of annuities, established by an Act made in the third year of His present Majesty's reign, in respect of several navy, victualling, and transport bills, and ordnance debentures.
- c. 39. An Act for raising the sum of one million five hundred thousand pounds, by way of annuities and a lottery, to be charged on the sinking fund.
- 7 Geo. 3. c. 24. An Act for raising the sum of one million five hundred thousand pounds, by way of annuities, and a lottery attended with annuities, to be charged on the sinking fund.
- c. 25. *An Act the title of which begins with the words,*—An Act for redeeming one-fourth part of the joint stock annuities,—*and ends with the words,*—to be charged on the said duties.
- c. 26. An Act for redeeming the remainder of the joint stock of annuities established by an Act made in the third year of His present Majesty's reign, in respect of several navy, victualling, and transport bills, and ordnance debentures.
- 8 Geo. 3. c. 29. *An Act the title of which begins with the words,*—An Act for redeeming the remainder of the joint stock of annuities,—*and ends with the words,*—to be charged on the said duties.
- c. 31. *An Act the title of which begins with the words,*—An Act for raising a certain sum of money,—*and ends with the words,*—to the said fund.
- 10 Geo. 3. c. 36. *An Act the title of which begins with the words,*—An Act for redeeming the capital or joint stock of annuities,—*and ends with the words,*—private and unlawful lotteries.
- c. 46. An Act for establishing a lottery, and for other purposes therein mentioned.

- 12 Geo. 3. c. 63. An Act for redeeming one million five hundred thousand pounds of the capital stocks of three pounds per centum annuities, in the manner, and on the terms therein mentioned; and for establishing a lottery.
- 14 Geo. 3. c. 76. An Act for redeeming the sum of one million of the capital stocks of three pounds per centum annuities, in the manner and on the terms therein mentioned; and for establishing a lottery.
- 15 Geo. 3. c. 41. An Act for redeeming the sum of one million of the capital stocks of three pounds per centum annuities, in the manner and on the terms therein mentioned; and for establishing a lottery.
- 16 Geo. 3. c. 34. An Act for granting to His Majesty several duties on coaches, and other carriages therein mentioned; and several rates and duties upon indentures, leases, bonds, and other deeds; and upon cards, dice, and newspapers; and for raising the sum of two millions by annuities, and a lottery, to be attended with annuities.
- 17 Geo. 3. c. 46. An Act for raising a certain sum of money by way of annuities, and for establishing a lottery.
- 18 Geo. 3. c. 22. An Act for raising a certain sum of money by way of annuities, and for establishing a lottery.
- 19 Geo. 3. c. 18. An Act for raising a certain sum of money by way of annuities, and for establishing a lottery.
- 20 Geo. 3. c. 16. An Act for raising a certain sum of money by way of annuities, and for establishing a lottery.
- 21 Geo. 3. c. 14. *An Act the title of which begins with the words,—An Act for raising a certain sum by way of annuities, and a lottery,—and ends with the words,—fifth year of the reign of His present Majesty* } :—  
in part. *Except section sixty.* }
- 22 Geo. 3. c. 8. An Act for raising a certain sum of money by way of annuities, and for establishing a lottery.
- c. 34. *An Act the title of which begins with the words,—An Act for raising a certain sum of money by loans or exchequer bills,—and ends with the words,—and several subsequent Acts.*
- 23 Geo. 3. c. 35. An Act for raising a certain sum of money by way of annuities, and for establishing a lottery.
- 24 Geo. 3. Sess. 2. An Act for raising a certain sum of money by way of annuities, and for  
c. 10. establishing a lottery.
- c. 32. An Act to postpone the payment of the sum of two millions, advanced by the governor and company of the Bank of England, towards the supply for the service of the year one thousand seven hundred and eighty-one.
- c. 37. *An Act the title of which begins with the words,—An Act for granting to His Majesty certain additional rates of postage,—and ends with the words,—free from postage.*
- c. 39. An Act for granting annuities to satisfy certain navy, victualling, and transport bills, and ordnance debentures.
- 25 Geo. 3. c. 32. An Act for granting annuities to satisfy certain navy, victualling, and transport bills, and ordnance debentures.
- c. 71. An Act for extending the time limited, by an Act of this session, for delivering in navy, victualling, and transport bills.
- c. 83. An Act for further postponing the payment of the sum of two millions, advanced by the governor and company of the Bank of England, towards the supply for the service of the year one thousand seven hundred and eighty-one.
- 26 Geo. 3. c. 34. An Act for altering the days of payment of the long annuities, and annuities for thirty and twenty-nine years.

29 Geo. 3. c. 37.	An Act for raising a certain sum of money by way of annuities.
31 Geo. 3. c. 33.	An Act for the payment of the sum of five hundred thousand pounds by the governor and company of the Bank of England into the receipt of His Majesty's exchequer.
33 Geo. 3. c. 28.	An Act raising a certain sum of money, by way of annuities, to be charged on the Consolidated Fund; and for making perpetual certain duties of excise on British spirits, and certain duties on the amount of assessed taxes.
c. 32.	<i>An Act the title of which begins with the words,</i> —An Act for enabling His Majesty to raise the sum of one million five hundred thousand pounds,— <i>and ends with the words,</i> —Bank of England.
c. 47. in part.	<i>An Act the title of which begins with the words,</i> —An Act for placing the stock called East India annuities under the management,— <i>and ends with the words,</i> —debts of the said company } :— Except section eight to end of Act.
34 Geo. 3. c. 1.	An Act for raising the sum of eleven millions by way of annuities.
c. 21.	An Act for granting annuities to satisfy certain navy and victualling bills; and for providing for the regular payment of all navy and victualling bills that shall be issued in future.
35 Geo. 3. c. 14.	An Act for raising the sum of eighteen millions by way of annuities.
c. 32.	An Act for granting annuities to satisfy certain navy and victualling bills.
c. 66.	<i>An Act the title of which begins with the words,</i> —An Act for making part of certain principal sums,— <i>and ends with the words,</i> —Bank of England.
c. 128.	An Act for allowing a further annuity to the subscribers to the sum of eighteen millions, authorized to be raised for the service of the year one thousand seven hundred and ninety-five.
36 Geo. 3. c. 12.	An Act for raising the sum of eighteen millions by way of annuities.
c. 74.	An Act for raising the sum of seven millions five hundred thousand pounds by way of annuities.
c. 122.	An Act for granting annuities to satisfy certain navy, victualling, and transport bills.
37 Geo. 3. c. 9.	An Act for granting annuities to satisfy certain navy, victualling, transport, and exchequer bills.
c. 10.	An Act for raising the sum of eighteen millions by way of annuities.
c. 20.	An Act for extending the time limited by an Act of this session, for delivering in navy, victualling, transport, and exchequer bills.
c. 46.	<i>An Act the title of which begins with the words,</i> —An Act for making certain annuities created by the Parliament of the Kingdom of Ireland, transferrable,— <i>and ends with the words,</i> —Bank of England.
c. 57.	An Act for raising the sum of fourteen millions five hundred thousand pounds by way of annuities.
c. 122.	<i>An Act the title of which begins with the words,</i> —An Act for the better preventing the forging or counterfeiting the names of witnesses to letters of attorney,— <i>and ends with the words,</i> —stocks or funds.
38 Geo. 3. c. 37.	An Act for raising the sum of seventeen millions by way of annuities.
39 Geo. 3. c. 7.	An Act for raising the sum of three millions by way of annuities.
c. 60.	An Act for raising the sum of fifteen millions five hundred thousand pounds by way of annuities.
39 & 40 Geo. 3. c. 22.	An Act for raising the sum of twenty millions five hundred thousand pounds by way of annuities.
41 Geo. 3.(U.K.) c. 3.	An Act for raising the sum of twenty-eight millions by way of annuity.

42 Geo. 3. c. 8.	An Act for granting annuities to satisfy certain exchequer bills.
c. 33.	An Act for raising the sum of twenty-five millions by way of annuities.
c. 58.	An Act for raising a certain sum of money by way of annuities on debentures, for the service of Ireland.
43 Geo. 3. c. 67.	An Act for raising the sum of twelve millions by way of annuities.
44 Geo. 3. c. 47.	An Act for raising the sum of fourteen millions five hundred thousand pounds by way of annuities.
c. 48.	An Act for raising a certain sum of money by way of annuities or debentures for the service of Ireland.
c. 99.	An Act for granting additional annuities to the proprietors of stock created by two Acts, passed in the thirty-seventh and forty-second years of His present Majesty.
45 Geo. 3. c. 8.	An Act for amending an Act, passed in the last session of Parliament, for granting additional annuities to the proprietors of stock created by two Acts, passed in the thirty-seventh and forty-second years of His present Majesty.
c. 12.	An Act for raising the sum of twenty-two millions five hundred thousand pounds by way of annuities.
c. 40.	An Act for raising the sum of one million five hundred thousand pounds by way of annuities for the service of Ireland.
c. 73.	An Act to enable the Commissioners of the Treasury to contract with certain proprietors of stock created by two Acts, passed in the thirty-seventh and forty-second years of His present Majesty, for granting other annuities in lieu thereof, or to pay the same off at the period herein mentioned.
46 Geo. 3. c. 33.	An Act for raising the sum of twenty millions by way of annuities.
c. 47.	An Act for raising a certain sum of money by way of annuities or debentures, for the service of Ireland.
c. 55.	An Act to provide for the payment, at the Bank of Ireland, of the interest on certain debentures now payable at the Exchequer of Ireland; and also for altering the days of payment of the interest or dividends on certain annuities in Ireland.
47 Geo. 3. Sess. 1.	An Act for raising the sum of fourteen millions two hundred thousand pounds by way of annuities.
c. 28.	
c. 46.	An Act for raising the sum of one million five hundred thousand pounds by way of annuities, for the service of Ireland.
48 Geo. 3. c. 3.	An Act for empowering the governor and company of the Bank of England to advance the sum of three million, towards the supply for the service of the year one thousand eight hundred and eight.
c. 38.	An Act for granting annuities to satisfy certain exchequer bills.
c. 76.	An Act for raising the sum of ten millions five hundred thousand pounds by way of annuities.
c. 83.	An Act for raising the sum of seven hundred and fifty thousand pounds by way of annuities for the service of Ireland.
49 Geo. 3. c. 21.	An Act for granting annuities to discharge certain exchequer bills.
c. 71.	An Act for raising the sum of fourteen millions six hundred thousand pounds by way of annuities.
c. 78.	An Act for raising the sum of one million two hundred and fifty thousand pounds by way of annuities and Treasury bills for the service of Ireland.
50 Geo. 3. c. 23.	An Act for granting annuities to discharge certain exchequer bills.
c. 36.	An Act for granting annuities to discharge an additional number of exchequer bills.



- c. 45. An Act for raising the sum of twelve millions by way of annuities.
- c. 68. An Act for raising the sum of one million four hundred thousand pounds by way of annuities for the service of Ireland.
- 51 Geo. 3. c. 16. An Act for granting annuities to discharge certain exchequer bills.
- c. 22. An Act for raising the sum of two millions five hundred thousand pounds, by way of annuities and Treasury bills, for the service of Ireland.
- c. 26. An Act for raising the sum of four millions nine hundred eighty-one thousand three hundred pounds by way of annuities.
- c. 35. An Act to secure to the Bank of Ireland the repayment of all monies advanced by them for the purposes and in the manner therein mentioned.
- c. 49. An Act for raising the sum of twelve millions by way of annuities.
- 52 Geo. 3. c. 14. An Act for granting annuities to discharge certain exchequer bills.
- c. 24. An Act for raising the sum of six millions seven hundred and eighty-nine thousand six hundred and twenty-five pounds by way of annuities.
- c. 70. An Act for raising the sum of one million five hundred thousand pounds by way of annuities and Treasury bills for the service of Ireland.
- c. 85. An Act for raising the sum of twenty-two millions five hundred thousand pounds by way of annuities.
- 53 Geo. 3. c. 41. An Act for granting annuities to satisfy certain exchequer bills; and for raising a sum of money by debentures for the service of Great Britain.
- c. 53. *An Act the title of which begins with the words,—An Act for raising a further sum of money by debentures,—and ends with the words,—money by debentures.*
- c. 61. An Act for raising the sum of two millions by way of annuities and Treasury bills for the service of Ireland.
- c. 69. An Act for raising the sum of twenty-seven millions by way of annuities.
- c. 95. An Act to provide for the charge of the addition to the public funded debt of Great Britain, in the year one thousand eight hundred and thirteen.
- 54 Geo. 3. c. 3. An Act for raising the sum of twenty-two millions by way of annuities.
- c. 8. An Act to provide for the charge of the addition to the public funded debt of Great Britain for the service of the year one thousand eight hundred and fourteen.
- c. 76. An Act for raising the sum of twenty-four millions by way of annuities.
- c. 85. An Act for raising the sum of three millions by way of annuities for the service of Ireland.
- c. 89. An Act for the charge of the further addition to the public funded debt of Great Britain, for the service of the year one thousand eight hundred and fourteen.
- c. 139. An Act to rectify a mistake in an Act of this session of Parliament, for raising the sum of twenty-four millions by way of annuities.
- c. 140. An Act to amend several Acts of the Parliament of Ireland for granting certain annuities.
- 55 Geo. 3. c. 2. An Act for directing the application of the residuary personal estate of Anna Maria Reynolds, spinster, bequeathed by her to the use of the sinking fund.
- c. 16. *An Act the title of which begins with the words,—An Act to continue and amend an Act,—and ends with the words,—service of the year one thousand eight hundred and eight.*
- c. 58. An Act for granting annuities to discharge certain exchequer bills.
- c. 74. An Act for granting annuities to discharge certain exchequer bills; and for raising a sum of money by annuities, for the service of Great Britain.
- c. 124. An Act for raising the sum of thirty-six millions by way of annuities.

- 56 Geo. 3. c. 7. *An Act the title of which begins with the words,—An Act to continue,—and ends with the words,—service of the year one thousand eight hundred and eight.*
- c. 60. *An Act the title of which begins with the words,—An Act to authorise the transferring stock,—and ends with the words,—reduction of the National Debt.*
- c. 89. *An Act to provide for the charge of certain additions to the public debt of Ireland, for the service of the year one thousand eight hundred and sixteen.*
- 57 Geo. 3. c. 82. *An Act to continue an Act passed in Ireland in the thirteenth and fourteenth years of His present Majesty respecting certain annuities, so long as the said annuities shall be payable.*
- c. 83. *An Act to amend an Act, made in the last session of Parliament, for providing for the charge of certain additions to the public debt of Ireland.*
- 58 Geo. 3. c. 23. *An Act for raising the sum of three millions, by the transfer of certain three pounds per centum annuities into other annuities, at the rate of three pounds ten shillings per centum; and for granting annuities to discharge certain exchequer bills.*
- 59 Geo. 3. c. 42. *An Act for raising the sum of twelve millions by way of annuities.*
- 1 Geo. 4. c. 13. *An Act for funding exchequer bills to a certain amount, and for raising a sum of money by way of annuities, for the service of the year one thousand eight hundred and twenty.*
- c. 17. *An Act for raising the sum of five millions by way of annuities.*
- c. 23. *An Act to provide for the charge of the addition to the public funded debt of Great Britain, for the service of the year one thousand eight hundred and twenty.*
- 1 & 2 Geo. 4. *An Act for making further provision for the gradual resumption of payments in cash by the Bank of England.*
- c. 26. *An Act for making further provision for the gradual resumption of payments in cash by the Bank of Ireland.*
- c. 27. *An Act for making further provision for the gradual resumption of payments in cash by the Bank of Ireland.*
- c. 73. *An Act to permit, for three years, the transfer from certain public stocks or funds in Ireland, to certain stocks or funds in Great Britain.*
- c. 108. *An Act to provide for the charge of the addition to the public funded debt of the United Kingdom of Great Britain and Ireland, for the service of the year one thousand eight hundred and twenty-one.*
- 3 Geo. 4. c. 9. *An Act for transferring several annuities of five pounds per centum per annum into annuities of four pounds per centum per annum.*
- c. 17. *An Act for converting annuities and debentures of five pounds per centum per annum, payable at the Bank of Ireland, into new annuities of four pounds per centum per annum.*
- c. 26. *An Act the title of which begins with the words,—An Act to reduce the rate of interest,—and ends with the words,—forty-eighth year of His late Majesty.*
- c. 61. *An Act the title of which begins with the words,—An Act to regulate the performance of certain contracts,—and ends with the words,—annuities in lieu thereof.*
- c. 66. *An Act the title of which begins with the words,—An Act for authorizing the Commissioners for the Reduction of the National Debt,—and ends with the words,—annuities in lieu thereof.*
- c. 68. *An Act to provide for the charge of the addition to the public funded debt of Great Britain and Ireland, for defraying the expence of military and naval pensions and civil superannuations.*
- c. 89. *An Act to provide for the charge of the addition to the public funded debt of Great Britain, for the service of the year one thousand eight hundred and twenty-two.*

c. 93.	An Act for carrying into execution an agreement between His Majesty and the East India Company.
4 Geo. 4. c. 22.	<i>An Act the title of which begins with the words,—An Act to confirm an agreement,—and ends with the words,—Bank of England.</i>
5 Geo. 4. c. 9.	An Act to carry into effect a convention relating to Austrian loans.
c. 11.	An Act for transferring several annuities of four pounds per centum per annum into annuities of three pounds ten shillings per centum per annum.
c. 24.	An Act for transferring several annuities of four pounds per centum per annum, transferable at the Bank of Ireland, into reduced annuities of three pounds ten shillings per centum per annum.
c. 45.	<i>An Act the title of which begins with the words,—An Act to authorise the issuing of exchequer bills,—and ends with the words,—reduced annuities of three pounds ten shillings per centum.</i>
c. 53.	An Act to permit the mutual transfer of capital in certain public stocks or funds transferable at the Banks of England and Ireland respectively.
7 Geo. 4. c. 39.	An Act for funding eight millions of exchequer bills.
10 Geo. 4. c. 31.	An Act for funding three millions of exchequer bills.
11 Geo. 4. & 1 Will. 4. c. 13.	An Act for transferring certain annuities of four pounds per centum per annum into annuities of three pounds and ten shillings or five pounds per centum per annum.
4 & 5 Will. 4. c. 31.	An Act for transferring certain annuities of four pounds per centum per annum into annuities of three pounds and ten shillings per centum per annum, and for providing for paying off the persons who may dissent to such transfer.
c. 80.	An Act to provide for the repayment to the governor and company of the Bank of England of one fourth part of the debt due from the public to the said company, in pursuance of an Act passed in the last session of Parliament.
7 Will. 4. & 1 Vict. c. 59.	An Act to postpone until the first day of January one thousand eight hundred and thirty-nine the repayment of certain sums advanced by the Bank of Ireland for the public service.
1 & 2 Vict. c. 81.	An Act further to postpone until the first day of January one thousand eight hundred and forty the repayment of certain sums advanced by the Bank of Ireland for the public service.
2 & 3 Vict. c. 97.	An Act for funding exchequer bills.
3 & 4 Vict. c. 75.	An Act to regulate the repayment of certain sums advanced by the governor and company of the Bank of Ireland for the public service.
5 Vict. c. 8.	An Act for funding exchequer bills, and for making provision for the service of the year one thousand eight hundred and forty-one.
7 & 8 Vict. c. 4.	An Act for transferring three pounds ten shillings per centum per annum annuities one thousand eight hundred and eighteen into annuities of three pounds five shillings per centum per annum and new three pounds per centum per annum annuities.
c. 5.	An Act for transferring certain annuities of three pounds ten shillings per centum per annum and government debentures into annuities of three pounds five shillings per centum per annum and new three pounds per centum per annum annuities.
c. 39.	An Act to exempt from the payment of property tax the dividends on certain annuities of three pounds ten shillings per centum per annum payable for the quarter of the year ending the tenth day of October one thousand eight hundred and forty-four.
c. 64.	An Act to provide for paying off such of the three pounds ten shillings per centum annuities and government debentures which are to be paid off under two Acts passed in the present session of Parliament.

c. 80.	<i>An Act the title of which begins with the words,—An Act for completing the guarantee fund of the South Sea Company,—and ends with the words,—South Sea stock and annuities.</i>
8 & 9 Vict. c. 62.	An Act to make further provisions as to stock and dividends unclaimed.
c. 97.	An Act to amend the law respecting testamentary dispositions of property in the public funds, and to authorize the payment of dividends on letters of attorney in certain cases.
9 & 10 Vict. c. 8.	An Act to make further provisions as to unclaimed stock and dividends of the South Sea Company.
10 & 11 Vict. c. 9.	An Act for raising the sum of eight millions by way of annuities.
11 & 12 Vict. c. 125.	An Act for raising the sum of two millions by exchequer bills, or by the creation of annuities, for the service of the year one thousand eight hundred and forty-eight.
16 & 17 Vict. c. 23.	<i>An Act the title of which begins with the words,—An Act for redeeming or commuting the annuity,—and ends with the words,—and issuing exchequer bonds.</i>
c. 132.	<i>An Act the title of which begins with the words,—An Act to extend the provisions of an Act,—and ends with the words,—payments to be made under the said Act.</i>
18 & 19 Vict. c. 18.	An Act for raising the sum of sixteen millions by way of annuities.
19 & 20 Vict. c. 5.	An Act for funding exchequer bills and raising money by way of annuities.
c. 6.	An Act for raising five millions by way of annuities.
c. 21.	An Act for raising the further sum of five millions by way of annuities.
21 & 22 Vict. c. 1.	An Act to indemnify the governor and company of the Bank of England in respect of certain issues of their notes, and to confirm such issues, and to authorize further issues for a time to be limited.
23 & 24 Vict. c. 71.	An Act to make provision as to stock and dividends unclaimed in Ireland.
24 & 25 Vict. c. 3. in part.	An Act to make further provision respecting certain payments to and from the Bank of England, and to increase the facilities for the transfer of stocks and annuities, and for other purposes } in part; namely,— Sections one, seven, and eight.
c. 35.	<i>An Act the title of which begins with the words,—An Act to increase the facilities for the transfer of stocks,—and ends with the words,—and for other purposes.</i>
25 & 26 Vict. c. 21.	An Act to amend the law relating to the transfer of stocks and annuities transferable at the Bank of Ireland.
26 & 27 Vict. c. 28.	Stock Certificate Act, 1863.
c. 33. in part.	An Act for granting to Her Majesty certain duties of inland revenue; and to amend the laws relating to } in part; namely,— the inland revenue } Section twenty-four.
29 & 30 Vict. c. 11. in part.	The National Debt Reduction Act, 1866. In part; namely,— Section two.
32 & 33 Vict. c. 104.	The Dividends and Stock Act, 1869.
33 & 34 Vict. c. 47.	The Dividends and Stock Act, 1870:— Except as to any payment on 5th January 1871 in respect of dividend.

## CHAP. 70.

*The Gas and Water Works Facilities Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

*Preliminary.*

1. *Short title.*
2. *Interpretation of terms.*

*Description of Cases within this Act.*

3. *Act to apply to certain cases.*

*Provisional Orders authorising Gas and Water Undertakings.*

4. *By whom provisional orders authorising undertakings may be obtained.*
  5. *Notices and deposit of documents by promoters as in schedule.*
  6. *Power for Board of Trade to determine on application and on objection.*
  7. *Power for Board of Trade to make Provisional Order. Form and contents of Provisional Order. Costs of Order.*
  8. *Publication of Provisional Order as in schedule.*
  9. *Confirmation of Provisional Order by Act of Parliament.*
  10. *Incorporation of general Acts in Provisional Order.*
  11. *Cesser of powers at expiration of prescribed time.*
  12. *Gas rents and water rates in schedule.*
  13. *Company not exempt from provisions of general Act.*
  14. *Queen in Council may substitute any department for Board of Trade for the purposes of this Act.*
  15. *Act not to apply to Metropolis.*
- Schedules.*

An Act to facilitate in certain cases the obtaining of powers for the construction of Gas and Water Works and for the supply of Gas and Water.

(9th August 1870.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

*Preliminary.*

1. This Act may be cited for all purposes as "The Gas and Water Works Facilities Act, 1870."

2. For the purposes of this Act, the terms herein-after mentioned shall have the meanings herein-after assigned to them; that is to say,

The term "local authority" shall mean the bodies of persons named in the table in the Schedule (A.) to this Act annexed :

The term "road" shall mean any carriageway being a public highway, and any bridge forming part of the same :

The term "road authority" shall mean any local authority, board, town council, body corporate, commissioners, trustees, vestry, or

other body or persons in whom a road as defined by this Act is vested, or who have the power to maintain or repair such road :

The term "district," in relation to a local authority, shall mean the area within the jurisdiction of such local authority :

The term "The Lands Clauses Acts" means, so far as the Provisional Order in which that term is used relates to England or Ireland, the Lands Clauses Consolidation Act, 1845; and, so far as the same relates to Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845; together with, in each case, the Lands Clauses Consolidation Acts Amendment Act, 1860.

*Description of Cases within this Act.*

3. This Act shall apply where powers are required for all or any of the purposes following :—

- (1.) To construct or to maintain and continue gasworks and works connected therewith, or to manufacture and supply gas in any district within which there is not an existing company, corporation, body of commissioners, or person empowered by Act of Parliament to construct such works or to manufacture and supply gas :
- (2.) To construct or to maintain and continue waterworks and works connected therewith, or to supply water in any district

within which there is not an existing company, corporation, body of commissioners, or person empowered by Act of Parliament to construct such works and to supply water:

- (3.) To raise additional capital necessary for any of the purposes aforesaid:
- (4.) To enable two or more companies or persons duly authorised to supply gas or water in any district or in adjoining districts to enter into agreements jointly to furnish such supply, or to amalgamate their undertakings:
- (5.) To authorise two or more companies or persons supplying gas or water in any district or in adjoining districts to manufacture and supply gas or to supply water, and to enter into agreements jointly to furnish such supply and to amalgamate their undertakings:

and such purposes, or any one or more of them, as the case may be, shall, for the purposes of this Act, be deemed to be included in the term "gas undertaking" or "water undertaking," according as the same relate to the supply of gas or water; provided that any gas or water company empowered as aforesaid may apply for and avail themselves of the facilities of this Act within their own districts respectively.

#### *Provisional Orders authorising Gas and Water Undertakings.*

4. Provisional Orders authorising any gas undertaking or water undertaking under the authority of this Act may be obtained in any district by any company, companies, or person; and in the construction of this Act the term "the undertakers" shall be deemed to include any such company, companies, or person.

Where the undertakers require powers for the purpose of constructing gasworks or waterworks, or works connected therewith within any district, the consent of the local authority of such district shall be necessary before any Provisional Order can be obtained; and where in such district there is a road authority distinct from the local authority, the consent of such road authority shall also be necessary in any case where power is sought to break up any road of such road authority, before any Provisional Order can be obtained, unless the Board of Trade in any case in which the consent of the local authority or road authority is refused are of opinion, after inquiry, that, having regard to all the circumstances of the case, such consent ought to be dispensed with, and in such case they shall make a special report, stating the grounds upon which they have dispensed with such consent.

5. The undertakers intending to make an application for a Provisional Order in pursuance of this Act shall proceed as follows:—

- (1.) On or before the first of November next before their application they shall give notice in writing of their intention to make the same to every company, corporation, or person (if any) supplying gas (if the proposed application relates to gasworks) or water (if the proposed application relates to waterworks) within the district to which the proposed application refers:
- (2.) In the months of October and November next before their application, or in one of those months, they shall publish notice of their intention to make such application by advertisement, according to the regulations contained in Part One of the Schedule (B.) to this Act; and where it is proposed to abstract water from any stream for any waterwork, they shall give notice in writing of their intention to make such application to the owners or reputed owners, leasees or reputed leasees, and occupiers of all mills and manufactories or other works using the waters of such stream for a distance of twenty miles below the point at which such water is intended to be abstracted, such distance to be measured along the course of such stream, unless such waters shall within a less distance than twenty miles fall into or unite with any navigable stream, and then only to the owners or reputed owners, leasees or reputed leasees, and occupiers of such mills and manufactories as aforesaid which shall be situate between the point at which such water is proposed to be abstracted and the point at which such water shall fall into or unite with such navigable stream; and such notice shall state the name (if any) by which the stream is known at the point at which such water shall be immediately abstracted, and also the parish in which such point is situate, and the time and place of deposit of the plans and sections required by this Act to be deposited:
- (3.) On or before the thirtieth day of the same month of November they shall deposit the documents described in Part Two of the same schedule, according to the regulations therein contained:
- (4.) On or before the twenty-third day of December in the same year they shall deposit the documents described in Part Three of the same schedule, according to the regulations therein contained.

All maps, plans, and documents required by this Act to be deposited for the purposes of any

Provisional Order may be deposited with the persons and in the manner directed by the Act of the session of Parliament held in the seventh year of the reign of His late Majesty King William the Fourth and the first year of Her present Majesty, intituled "An Act to compel clerks of " the peace for counties and other persons to " take the custody of such documents as shall " be directed to be deposited with them under " the standing orders of either House of Parlia- " ment;" and all the provisions of that Act shall apply accordingly.

6. The Board of Trade shall consider the application, and also any objection thereto that may be lodged with them on or before such day as they from time to time appoint, and shall determine whether or not the undertakers may proceed with the application.

7. Where it appears to the Board of Trade expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, and it has been proved to their satisfaction that all the requisitions of section five of this Act have been in all respects complied with, the Board of Trade may settle and make a Provisional Order accordingly.

Every such Provisional Order if it relates to gasworks shall expressly restrict the undertakers from manufacturing gas or any residual products arising in the manufacture of gas on any land except such as is specified in that behalf in the order, and shall also expressly restrict them from storing gas on any land except such as is specified in that behalf in the order within three hundred yards from any dwelling-house existing at the time when the undertakers propose to store gas on such land, without the consent in writing of the owner, lessee, and occupier of such dwelling-house.

Every such Provisional Order shall contain such other provisions as, according to the nature of the application and the facts and circumstances of each case, the Board of Trade thinks fit to submit to Parliament for confirmation in manner provided by this Act; but so that any such Provisional Order shall not contain any provision for empowering the undertakers or any other person to acquire lands otherwise than by agreement, or to acquire any lands, even by agreement, except to an extent therein limited.

The costs of and connected with the preparation and making of each Provisional Order shall be paid by the undertakers, and the Board of Trade may require the undertakers to give security for such costs before they proceed with the Provisional Order.

8. When a Provisional Order has been made as aforesaid and delivered to the undertakers, the

undertakers shall forthwith deposit and publish the same by advertisement according to the regulations contained in Part Four of the Schedule (B.) to this Act.

9. On proof to the satisfaction of the Board of Trade of the completion of such publication as aforesaid, the Board of Trade shall, as soon as they conveniently can after the expiration of seven days from the completion of such publication in relation to any Provisional Order which shall have been published as aforesaid, not later than the twenty-fifth of April in any year, procure a Bill to be introduced into either House of Parliament for an Act to confirm the Provisional Order, which shall be set out at length in the schedule to the Bill; but until confirmation by Act of Parliament a Provisional Order under this Act shall not have any operation.

If while any such Bill is pending in either House of Parliament a petition is presented against any Provisional Order comprised therein, the Bill, so far as it relates to the order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Bill for a special Act.

The Act of Parliament confirming any Provisional Order under this Act shall be deemed a Public General Act.

10. The provisions of The Lands Clauses Acts shall be incorporated with every Provisional Order under this Act, save where the same are expressly varied or excepted by any such Provisional Order, and except as to the following provisions, namely,—

- (1.) With respect to the purchase and taking of lands otherwise than by agreement:
- (2.) With respect to the entry upon lands by the promoters of the undertaking.

Where a Provisional Order authorises a gas undertaking the provisions of "The Gasworks Clauses Act, 1847," shall be incorporated with such Provisional Order, save where the same are thereby expressly varied or excepted.

Where a Provisional Order authorises a water undertaking the provisions of "The Waterworks Clauses Act, 1847," and of "The Waterworks Clauses Act, 1863," shall be incorporated with such Provisional Order, save where the same are thereby expressly varied or excepted.

For the purposes of such incorporation a Provisional Order under this Act shall be deemed the special Act.

11. If any undertakers empowered by any Provisional Order under this Act to make works do not, within three years from the date of such Provisional Order, or within any shorter period prescribed therein, complete the works; or,

If within one year from the date of the Provisional Order, or within such shorter time as

is prescribed in the Provisional Order, the works are not substantially commenced; or, If the works are commenced, but whilst the powers to carry them on exist are suspended without a reason sufficient in the opinion of the Board of Trade to warrant such suspension;

the powers given by the Provisional Order to the undertakers for executing such works, or otherwise in relation thereto, shall cease to be exercised, except as to so much of the same as is then completed, unless the time be prolonged by the special direction of the Board of Trade.

A statement in writing by the Board of Trade to the effect that such works have not been completed, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purposes of this section of such non-completion, non-commencement, or suspension.

12. The undertakers empowered by any Provisional Order under this Act may demand and take, in respect of gas or water supplied by them under the authority of such Provisional Order, rents and rates respectively not exceeding the sums specified in such Provisional Order, subject and according to the regulations therein specified.

13. Nothing in any Provisional Order, or Act confirming the same, shall exempt the undertaking, or the company, corporation, or person to whom it belongs, from the provisions of any general Act of Parliament relating to gasworks or waterworks passed after the passing of this Act, or from any revision or alteration under the authority of Parliament of the maximum rents and rates allowed to be taken under the Provisional Order.

14. For the purpose of carrying into effect the provisions of this Act, it shall be lawful for Her Majesty at any time after the passing of this Act, by Order in Council, to substitute for the Board of Trade any other department of Her Majesty's Government, and from and after such time as may be specified for the purpose in any such order, or if no time be specified therein from and after the date of such order, all matters to be done in pursuance of this Act by or in connexion with the Board of Trade shall be done by or in connexion with such substituted department.

15. This Act shall not apply to any place within the Metropolis, as the same is defined in the Metropolis Management Act, 1855.

—•••••—  
SCHEDULE A.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.
<i>England and Wales.</i>	
Boroughs (1.) - - - - -	The mayor, aldermen, and burgesses acting by the council.
Any place other than a borough, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any Local Act with powers of improving, cleansing, or paving any town.	The commissioners, trustees, or other persons intrusted by the Local Act with powers of improving, cleansing, or paving the town.
Any place not included in the above descriptions, and within the jurisdiction of local board constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts.	The local board.
Any place or parish not within the above descriptions, and in which a rate is levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.
<i>Scotland.</i>	
Places within the jurisdiction of any town council, and not subject to the separate jurisdiction of police commissioners or trustees.	The town council.

(1.) "Borough" shall mean any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intitled "An Act to provide for the Regulation of Municipal Corporations in England and Wales."



Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.
<p>In places within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any General or Local Act.</p> <p>In any parish or part thereof over which the jurisdiction of a town council or of police commissioners or trustees exercising the functions of police commissioners does not extend.</p>	<p>The police commissioners or trustees.</p> <p>The parochial board.</p>
<i>Ireland.</i>	
The city of Dublin - - - - -	The Right Honourable the Lord Mayor, aldermen, and burgesses, acting by the town council.
Towns corporate, with exception of Dublin -	The mayor, aldermen, and burgesses, acting by the town council.
Towns having commissioners under an Act made in the 9th year of the reign of George the Fourth, intituled "An Act to make provision for the Lighting, Cleansing, and Watching of Cities and Towns corporate and Market Towns in Ireland in certain cases."	The commissioners.
Towns having municipal commissioners under 3 & 4 Vict. c. 108.	The municipal commissioners.
Towns having town commissioners under the Towns Improvement (Ireland) Act, 1854 (17 & 18 Vict. c. 103), or any Acts amending the same, or under any Local Act.	The town commissioners.
Townships having commissioners under Local Acts.	The township commissioners.

## SCHEDULE B.

## PROVISIONAL ORDERS.

## PART I.

*Advertisement in October or November of intended application.*

(1.) Every advertisement is to contain the following particulars:

1. The objects of the intended application.
2. A general description of the nature of the proposed new works, if any.
3. The names of the townlands, parishes, townships, and extra-parochial places in which the proposed new works, if any, will be made.
4. The times and places at which the deposit under Part II. of this schedule will be made.
5. An office, either in London or at the place to which the intended application relates, at which printed copies of the draft Pro-

visional Order, when deposited, and of the Provisional Order, when made, will be obtainable as herein-after provided.

(2.) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.

(3.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed undertaking, where the proposed works (if any) will be made; or if there be no such newspaper, then in some one and the same newspaper published in the county in which every such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(4.) The advertisement is also, in every case, to be inserted once at least in the London, Edinburgh, or Dublin Gazette, accordingly as the district is situate in England, Scotland, or Ireland.

## PART II.

*Deposit on or before 30th November.*

- (1.) The undertakers are to deposit—
1. A copy of the advertisement published by them.
  2. If the application relates to gas, a map showing the land proposed to be used for the manufacture of gas, or of residual products arising in the manufacture of gas.
  3. A proper plan and section of the proposed new works, if any, such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf.
- (2.) The documents aforesaid are to be deposited for public inspection—
- In England or Ireland, in the office of the clerk of the peace for every county, riding, or division; in Scotland, in the office of the principal sheriff clerk for every county, district, or division which will be affected by the proposed undertaking, or in which any proposed new work will be made.
- (3.) The documents aforesaid are also to be deposited at the office of the Board of Trade.

## PART III.

*Deposit on or before 23rd December.*

- (1.) The undertakers are to deposit at the office of the Board of Trade—
1. A memorial signed by the undertakers, headed with a short title descriptive of the undertaking (corresponding with that at the head of the advertisement), addressed to the Board of Trade, and praying for a Provisional Order.
  2. A printed draft of the Provisional Order as proposed by the undertakers, with any schedule referred to therein.
  3. An estimate of the expense of the proposed new works, if any, signed by the persons making the same.
- (2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement; such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.

(3.) The memorial of the undertakers (to be written on foolscap paper, bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require :—

[*Short title of undertaking.*]

To the Board of Trade,

The memorial of the undertakers of [*short title of undertaking*]:  
Sheweth as follows;

1. Your memorialists have published, in accordance with the requirements of the Gas and Water Works Facilities Act, 1870, the following advertisement:

[*Here advertisement to be set out verbatim.*]

2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and [*Here state deposit of the several matters required by Act.*]

Your memorialists, therefore, pray that a Provisional Order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

A.B.,  
C.D.,

Undertakers.

## PART IV.

*Deposit and advertisement of Provisional Order when made.*

- (1.) The undertakers are to deposit printed copies of the Provisional Order, when settled and made, for public inspection in the offices of clerks of the peace and sheriff clerks, where the documents required to be deposited by them under Part II. of this schedule were deposited.
- (2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of each.
- (3.) They are also to publish the Provisional Order as an advertisement once in the local newspaper in which the original advertisement of the intended application was published.

## CHAP. 71.

*The National Debt Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

## PART I.—PRELIMINARY.

1. *Short title.*
2. *Division of Act into parts.*
3. *Interpretation of terms.*
4. *Effect of schedules.*

## PART II.—DENOMINATIONS AND INCIDENTS OF STOCK.

5. *Continuance of existing permanent funded debt on existing terms.*
6. *Stock charged on Consolidated Fund.*
7. *Stock free from taxes.*
8. *Interest in stock indefeasible.*
9. *Stock personal estate.*
10. *Stock free from attachment.*
11. *Annuities to be several joint stocks.*

## PART III.—PAYMENT OF DIVIDENDS

12. *Money for payment to be issuable.*
13. *Banks to have chief cashier and accountant general.*
14. *Issue by Treasury.*
15. *Application of issues by cashier.*
16. *Accounting by cashier, &c.*
17. *Receipt of dividends by executors, &c.*
18. *Evidence of title to dividend.*
19. *Dividends in case of infancy, &c., of a joint stockholder.*
20. *Dividend warrants by post.*
21. *Effect of posting a warrant.*

## PART IV.—TRANSFER.

22. *Mode of transfer.*
23. *Transfer by executors, &c.*
24. *Evidence of title on transfer.*
25. *Closing of transfer books for dividend.*

## PART V.—STOCK CERTIFICATES.

26. *Certificate of title to stock.*
27. *Descriptions of stock for which certificates may be issued.*
28. *Limitation of amount of certificate.*
29. *Restriction on trustees taking stock certificates.*
30. *No notice of trust.*
31. *Stock in certificate outstanding not transferable.*
32. *Distinction between stock certificates to bearer and nominal certificates.*
33. *Nominee in a nominal certificate not entitled to have it renewed as nominal.*
34. *Rules as to coupons.*
35. *Payment of coupons.*
36. *Income tax.*
37. *Fees in respect of dealing with stock under this part.*
38. *Loss or destruction of certificate or coupon.*

39. *General regulations with respect to stock certificates and coupons.*
40. *Remuneration to Banks.*
41. *Stock in certificate to have incidents of other stock, except as to transfer, &c.*
42. *Application of this part to stock certificates already issued, &c.*

---

PART VI.—TRANSFER BETWEEN ENGLAND AND IRELAND.

43. *Application for transfer between England and Ireland.*
44. *Restriction on transfer before closing of books.*
45. *Notices of transfers to and by National Debt Commissioners.*
46. *Stock transferred to National Debt Commissioners to be cancelled.*
47. *Transfer books to be kept by Banks.*
48. *Bank to whom transfer made to write stock into their books.*
49. *Loss or destruction of certificate.*
50. *Application of this part to terminable annuities.*

---

PART VII.—UNCLAIMED DIVIDENDS.

51. *Transfer of unclaimed stock to National Debt Commissioners.*
52. *List of names from which stock transferred.*
53. *Mode of transfer.*
54. *Subsequent dividends on stock transferred to be invested, &c.*
55. *Re-transfer and payment to person showing title.*
56. *Three months notice before re-transfer or payment.*
57. *Advertisements before re-transfer or payment.*
58. *Application to court to rescind order.*
59. *Bank not responsible to second claimant.*
60. *Order in favour of second claimant showing title.*
61. *Payment of unclaimed dividends to National Debt Commissioners.*
62. *Unclaimed stock in stock certificates and unclaimed coupons.*
63. *Investigation of circumstances of unclaimed dividends.*
64. *Allowance of expenses to Bank.*
65. *Payment of compensation allowed.*
66. *Indemnity to Banks.*
67. *Application of this part to stock already transferred, &c.*
68. *Application of this part to terminable annuities.*

---

PART VIII.—MISCELLANEOUS.

69. *Yearly payment to National Debt Commissioners in respect of 2l. 10s. per cents.*
70. *No fee for paying dividends, &c.; penalty.*
71. *Stamp duty.*
72. *Continuance of Bank of England.*
73. *Extension of provisions as to executors, &c. to all stocks, &c.*
74. *Protection to Banks.*  
*Schedules.*

An Act for consolidating, with Amendments, certain Enactments relating to the National Debt.

(9th August 1870.)

WHEREAS with a view to the revision of the Statute Law, and particularly to the preparation of the revised edition of the Statutes now in progress, it is expedient to consolidate, with amendments, certain enactments relating to the National Debt:

Be it therefore declared and enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

---

PART I.—PRELIMINARY.

1. This Act may be cited as The National Debt Act, 1870.

2. This Act is divided into parts as follows :—

- Part I.—Preliminary.
- Part II.—Denominations and Incidents of Stock.
- Part III.—Payment of Dividends.
- Part IV.—Transfer.
- Part V.—Stock Certificates.
- Part VI.—Transfer between England and Ireland.
- Part VII.—Unclaimed Dividends.
- Part VIII.—Miscellaneous.

3. In this Act—

- “The Bank of England” means the Governor and Company of the Bank of England, and includes their successors :
- “The Bank of Ireland” means the Governor and Company of the Bank of Ireland, and includes their successors :
- “Stock” means the several capital or joint stocks of perpetual annuities described in the first schedule to this Act, and includes any share or interest therein respectively :
- “Stockholder” means a person holding stock, being entered as proprietor thereof in the books of the Bank of England or of Ireland :
- “Warrant” includes draft, order, cheque, or other document used as a medium for payment of dividends :
- “Accountant General” includes chief accountant :
- “The Treasury” means the Commissioners of Her Majesty’s Treasury, or two of them :
- “The National Debt Commissioners” means the Commissioners for the Reduction of the National Debt :
- “The Consolidated Fund” means the Consolidated Fund of the United Kingdom of Great Britain and Ireland :
- “The Court of Chancery” means the Court of Chancery in England or the Court of Chancery in Ireland, as the case requires :
- “Person” includes corporation :
- “Representatives” means executors, administrators, or successors, and assigns.

4. The schedules to this Act shall be deemed part of this Act.

**PART II.—DENOMINATIONS AND INCIDENTS OF STOCK.**

5. The perpetual annuities described in the first schedule to this Act, to the respective amounts thereof subsisting at the passing of this Act, and the several capital sums in respect whereof those several annuities are payable, do and shall form part of the National Debt, due to the several persons who at the passing of this Act are entitled thereto, and their representatives.

All the annuities aforesaid shall, until redemption, continue to be payable in manner in this Act provided, at the respective rates in the same schedule mentioned, by equal half-yearly dividends on the respective days therein mentioned.

All the annuities aforesaid shall respectively continue redeemable by Parliament at the periods and in the manner in the same schedule mentioned, at the rate of one hundred pounds sterling for every one hundred pounds of the capital sums in respect whereof they are payable, and (subject to the provisions of part V. of this Act) shall continue transferable in the books of the Bank of England or of Ireland by the several stockholders for the time being and their representatives.

6. The annuities and dividends aforesaid shall continue to be charged on and payable out of the Consolidated Fund.

7. The annuities and dividends aforesaid shall continue to be free from all taxes, charges, and impositions, in like manner as heretofore.

8. The interests of stockholders and their representatives in the annuities aforesaid shall continue to be indefeasible.

9. The annuities aforesaid shall continue to be personal estate, and not descendible to heirs.

10. The annuities aforesaid shall continue to be not liable to foreign attachment by the custom of London or otherwise.

11. The annuities of each denomination mentioned in the first schedule to this Act taken together shall continue to constitute one capital or joint stock ; and all persons for the time being entitled thereto shall continue to have a proportional interest in every such capital or joint stock.

**PART III.—PAYMENT OF DIVIDENDS.**

12. Sufficient money to pay the dividends on all stock, with the charges attending the same, shall continue to be from time to time issuable for that purpose out of the Consolidated Fund.

13. Until all stock is redeemed, the Banks of England and Ireland shall each continue to employ within their office a fit person as their chief cashier, and another fit person as their accountant general.

14. The money from time to time and at any time issuable out of the Consolidated Fund and by this Act made applicable to the payment of the dividends on stock, shall, by order of the Treasury, without other warrant, from time to time

be issued and paid to the respective chief cashiers of the Banks of England and Ireland by way of imprest and on account for the payment of those dividends.

15. The chief cashier to whom money is from time to time so issued shall from time to time without delay apply the same in payment of the dividends on stock.

16. The chief cashier to whom money is so issued shall from time to time render his accounts thereof, and the same shall be audited, as the Treasury from time to time direct; but the Treasury may, if they think fit, dispense with such audit.

The respective accountants general of the Banks of England and Ireland shall from time to time inspect and examine all receipts and payments of the respective chief cashiers of those Banks, and the vouchers relating thereto, in order to prevent fraud, negligence, or delay.

17. The Bank of England or of Ireland shall not be required to allow any executors or administrators to receive any dividend on stock held by their testator or intestate until the probate of the will or the letters of administration has or have been left with the Bank for registration.

18. The Banks of England and Ireland respectively before allowing the receipt of any dividend on any stock may, if the circumstances of the case appear to them to make it expedient, require evidence of the title of any person claiming a right to receive the dividend.

That evidence shall be the declaration of competent persons under the Act described in the second schedule to this Act, part I., or of such other nature as the Banks respectively require.

19. Where stock is standing in the name of an infant or person of unsound mind, jointly with any person not under legal disability, a letter of attorney for the receipt of the dividends on the stock shall be sufficient authority in that behalf, if given under the hand and seal of the person not under disability, attested by two or more credible witnesses.

The Bank of England or of Ireland, before acting on the letter of attorney, may require proof to their satisfaction of the alleged infancy or unsoundness of mind, by the declaration of competent persons under the Act described in the second schedule to this Act, part I.

20. The Banks of England and Ireland respectively may from time to time, with the sanction of the Treasury, make arrangements for payment of dividends on stock by sending warrants through the post.

Arrangements so made before the passing of this Act shall continue unless and until altered by arrangements made after the passing thereof under this part thereof.

Every warrant so sent by post shall be deemed a cheque on the Bank of England or of Ireland within the Act mentioned in the second schedule to this Act, part II.

21. Where a stockholder desires to have his dividend warrants sent to him by post, he shall make a request for that purpose to the Bank of England or of Ireland in writing, signed by him, in a form approved by the Bank and the Treasury, and shall give to the Bank an address in the United Kingdom, or in the Channel Islands, or the Isle of Man, to which the letters containing the warrants are from time to time to be sent.

The posting by the Bank of a letter containing a dividend warrant addressed to a stockholder at his request under this or any former Act at the address given by him to the Bank, shall as respects the liability of the Bank be equivalent to the delivery of the warrant to the stockholder himself.

#### PART IV.—TRANSFER.

22. In the offices of the respective accountants general of the Banks of England and Ireland books shall continue to be kept wherein all transfers of stock shall be entered.

Every such entry shall be conceived in proper words for the purpose of transfer, and shall be signed by the party making the transfer,—or, if he is absent, by his attorney thereunto lawfully authorised by writing under his hand and seal, attested by two or more credible witnesses.

The person to whom a transfer is so made may, if he thinks fit, underwrite his acceptance thereof.

Except as otherwise provided by Act of Parliament, no other mode of transferring stock shall be good in law.

23. The interest of a stockholder dying (before or after the passing of this Act) in stock shall be transferable by his executors or administrators, notwithstanding any specific bequest thereof.

The Bank of England or of Ireland shall not be required to allow any executors or administrators to transfer any stock until the probate of the will of or the letters of administration to the deceased has or have been left with the Bank for registration, and may require all the executors who have proved the will to join in the transfer.

24. The Banks of England and Ireland respectively before allowing any transfer of stock may, if the circumstances of the case appear to them to make it expedient, require evidence of

the title of any person claiming a right to make the transfer.

That evidence shall be the declaration of competent persons under the Act described in the second schedule to this Act, part I., or of such other nature as the Banks respectively require.

25. The Banks of England and Ireland respectively may close their books for the transfer of stock on any day in the month next preceding that in which the dividends on that stock are payable; but so that the books be not at any time so closed for more than fifteen days.

The persons who on the day of such closing are inscribed as stockholders shall as between them and their transferees of stock be entitled to the then current half year's dividend thereon.

#### PART V.—STOCK CERTIFICATES.

26. A stockholder may obtain a stock certificate, that is to say, a certificate of title to his stock or any part thereof, with coupons annexed, entitling the bearer of the coupons to the dividends on the stock.

27. Stock certificates shall be issued only in respect of Consolidated Three pounds per centum annuities, Reduced Three pounds per centum annuities, and New Three pounds per centum annuities.

But the Treasury may by warrant declare that any other stock specified in the warrant shall be subject to this part of this Act, and thereupon stock certificates may be issued in respect of that stock also.

28. A stock certificate shall not be issued in respect of any sum of stock not being fifty pounds or a multiple of fifty pounds, or exceeding one thousand pounds.

29. A trustee of stock shall not apply for or hold a stock certificate unless authorised to do so by the terms of his trust; and any contravention of this section by a trustee shall be deemed a breach of trust.

But this section shall not impose on the Bank of England or of Ireland any obligation to inquire whether a person applying for a stock certificate is or is not a trustee, or subject either Bank to any liability in the event of their issuing a stock certificate to a trustee, or invalidate any stock certificate issued.

30. No notice of any trust in respect of any stock certificate or coupon shall be receivable by the Bank of England or of Ireland.

31. Where a stock certificate is outstanding the stock represented thereby shall cease to be

transferable in the books of the Bank of England or of Ireland.

32. A stock certificate, unless a name is inscribed therein, shall entitle the bearer to the stock therein described, and shall be transferable by delivery.

The bearer of a stock certificate may convert the same into a nominal certificate by inserting therein, in manner prescribed by any regulation made in pursuance of this part of this Act, the name, address, and quality of some person.

A stock certificate when it becomes nominal shall not be transferable, and the person named therein (in this part of this Act called the nominee), or some person deriving title from him by devolution in law, as in this part of this Act mentioned, shall alone be recognised by the Bank of England or of Ireland as entitled to the stock described in the certificate.

On the death of the nominee, his personal representative, and on his bankruptcy his assignee, and on the marriage of the nominee, being a female, her husband, shall alone be recognised by the Bank of England or of Ireland as entitled to the stock described in the certificate, and shall be deemed the nominee in that certificate.

33. The nominee in a nominal stock certificate shall not be entitled to have the same renewed as nominal, but he shall, on delivery up of his certificate, and of all unpaid coupons belonging thereto, to the Bank of England or of Ireland by whom the certificate was issued, and on compliance with any regulation made in pursuance of this part of this Act, be entitled to receive in exchange from that Bank a stock certificate to bearer.

The nominee in a nominal stock certificate, and the bearer of a stock certificate to bearer, may, on the like delivery, and on compliance with any regulation made in pursuance of this part of this Act, require to be registered in the books of the Bank of England or of Ireland as a holder of the stock described in the certificate under which he derives title, and thereupon the stock shall be re-entered in the books kept by that Bank for the entry of transferable stock, and shall become transferable, and the dividends thereon shall be payable, as if no certificate had been issued in respect of such stock.

34. The coupons annexed to a stock certificate shall comprise the dividends to be payable in respect of the stock therein described, for not less than five years from the date of the certificate.

At the expiration of that period fresh coupons shall be issued for a further period of not less than five years, and so for successive periods of

not less than five years each, during the continuance in force of the stock certificate.

But the Bank of England or of Ireland may, if they think fit, in lieu of issuing fresh coupons in respect of a stock certificate, give in exchange a fresh stock certificate with coupons annexed.

35. Coupons payable by the Bank of England or of Ireland shall be payable at the chief establishment of the respective Bank at the expiration of three clear days from the day of presentation, and at any branch establishment of the same Bank, situate more than ten miles from the chief establishment, at the expiration of five clear days from the day of presentation.

The payment to the bearer of a coupon of the amount expressed therein shall be a full discharge to the Bank of England or of Ireland from all liability in respect of that coupon and the dividend represented thereby.

36. Income tax shall be deducted from coupons in the same manner and subject to the same regulations in and subject to which it may by law be deducted from dividends payable by the Bank of England or of Ireland in respect of stock of stockholders inscribed in the books of that Bank; save only that income tax shall be deducted from a coupon, although the dividend represented thereby does not amount to fifty shillings.

37. No fee shall be charged on the issue of a stock certificate to bearer, in exchange for a like certificate, but there shall be charged with respect to the several other proceedings in relation to stock authorised by this part of this Act the fees specified in the third schedule to this Act, or such less fees as may be determined by the Treasury.

All fees received in pursuance of this part of this Act shall be paid into the receipt of Her Majesty's Exchequer.

38. If a stock certificate or coupon is lost or destroyed, the Bank of England or of Ireland (as the case requires) shall issue a new certificate or coupon, on receiving indemnity to their satisfaction against the claims of all persons deriving title under the certificate or coupon lost or destroyed.

39. The Banks of England and Ireland respectively, with the sanction of the Treasury, may from time to time issue any forms that may be required for carrying into effect this part of this Act, and may from time to time make any regulations not inconsistent with this part of this Act relative to the following things:

1. The time for which coupons are to be given:

2. The conversion of a stock certificate to bearer into a nominal certificate:
3. The authority under which and the mode in which the Bank are to act in issuing stock certificates or exchanging nominal certificates for certificates to bearer, or registering in their books the holders of stock certificates, or taking any other proceedings in relation to stock authorised to be taken under this part of this Act:
4. The mode of proving the title of or identifying any person applying for a stock certificate or deriving any title under a stock certificate:
5. The mode of proof of the death or bankruptcy of the nominee or of the marriage of the nominee being a female:
6. The mode of proof of the loss or destruction of a stock certificate or coupon:
7. Any other matter necessary to carry this part of this Act into effect.

Regulations so made before the passing of this Act shall continue in force unless and until altered by regulations made after the passing of this Act under this part thereof.

Any regulation so made before or after the passing of this Act shall be deemed to be part of this Act in the same manner as if it were enacted in this part of this Act.

40. There shall be paid to the Banks of England and Ireland respectively out of the Consolidated Fund, on account of the additional trouble, expense, and responsibility, if any, imposed on them by this part of this Act, in addition to the remuneration otherwise payable to them in respect of the management of the National Debt, such remuneration as the Treasury and they agree on.

41. Stock described in a stock certificate shall be charged on the same securities, and be subject to the same powers of redemption, and save as relates to the mode of transfer and payment of dividends thereon, shall be subject to the same incidents in all respects, including the remuneration payable to the Bank of England or of Ireland, as if it had continued registered in the books of that Bank as stock transferable therein.

42. Where a stock certificate has been issued under any former Act, this part of this Act shall have effect in relation thereto, and to the coupons annexed thereto and to the stock and dividends represented thereby respectively, in like manner, as nearly as may be, as if the certificate were issued after the passing of this Act under this part thereof.



**PART VI.—TRANSFER BETWEEN ENGLAND AND IRELAND.**

43. A stockholder holding stock transferable in the books of the Bank of England or of Ireland may make application in writing to that Bank for permission to transfer the same for the purpose of having the same amount of stock of the same denomination written into the books of the other Bank.

Thereupon, and on the applicant transferring the stock to which the application relates to the National Debt Commissioners, the Bank from whose books the transfer is to be made shall grant to the transferor a certificate of the facts of and connected with the transfer, directed to the other Bank.

Every application for permission to transfer, and every certificate of transfer, under this section, shall be according to a form established by the Bank of England in concurrence with the Bank of Ireland.

44. It shall not be lawful for any person to make any transfer for the purposes of this part of this Act of any stock from England to Ireland, or from Ireland to England, during three clear days before the day or days on which the books of the Banks of England and Ireland respectively or of either of those Banks are from time to time closed for dividend under part IV. of this Act.

45. Where such a transfer is made from the books of the Bank of England, that Bank shall on the day of transfer give notice thereof to the National Debt Commissioners at their office, who shall on receipt of the notice send it to the Bank of Ireland.

Where such a transfer is made from the books of the Bank of Ireland, that Bank shall on the day of transfer send notice thereof to the National Debt Commissioners at their office in London, who shall on receipt of the notice deliver it to the Bank of England.

46. Immediately on any such transfer being made to the National Debt Commissioners, the stock transferred shall be cancelled by them, and shall be for ever discharged from the account of the National Debt in Great Britain or in Ireland, as the case requires.

47. In the offices of the respective accountants general of the Banks of England and Ireland books shall be kept, wherein the names of all persons making under this part of this Act transfers to the National Debt Commissioners shall be entered, which books all such persons and their representatives may at all reasonable times inspect without fee.

48. On a transfer being made under this part of this Act, then on the production of a certificate under this part of this Act of the Bank from whose books the transfer is made the other Bank shall write into their books, in the name of the person in the certificate named for that purpose, stock of the denomination and amount therein specified.

Every such sum of stock shall carry dividend from the day on which dividend became due next before the transfer under this part of this Act.

49. In case of the loss or destruction of a certificate of the Bank of England or of Ireland under this part of this Act, that Bank, on proof of the same to their satisfaction, may grant a duplicate thereof, which shall stand in the place of the original, if the original has not been previously acted on; but on tender of such a duplicate the Bank to whom it is tendered may demand and take from the person tendering it sufficient security to Her Majesty, her heirs and successors, to indemnify that Bank against the production of or any claim under the original.

If at any time after a duplicate has been produced and acted on the original is surrendered to the Bank to whom the security was given, they shall detain and cancel the original, and send it cancelled to the other Bank, and deliver up the security to the persons by whom it was entered into, or such of them as require it.

50. In the enactments described in the second schedule to this Act, part III., this part of this Act shall be deemed to be substituted for the Act of the fifth year of the reign of King George the Fourth in those enactments mentioned.

---

**PART VII.—UNCLAIMED DIVIDENDS.**

51. All stock, no dividend whereon is claimed for ten years before the last day on which a dividend thereon becomes payable (except where payment of dividend has been restrained by a Court of Equity) shall be transferred in the books of the Bank of England or of Ireland (as the case may be) to the National Debt Commissioners.

52. Immediately after every such transfer the name in which the stock stood immediately before the transfer, the residence and description of the parties, the amount transferred, and the date of transfer, shall be entered in a list to be kept for the purpose by the Bank in whose books the stock stands, which list shall be open for inspection at the usual hours of transfer.

A duplicate of each list shall be kept at the office of the National Debt Commissioners.

53. Every such transfer shall be made and signed by the accountant general or deputy accountant general or secretary or deputy or assistant secretary of the Bank in whose books the stock stands at the transfer, and shall be as effectual to all intents as if signed by the person in whose name the stock then stands.

54. Where stock is transferred under this part of this Act all dividends accruing thereon after the transfer shall be paid to the National Debt Commissioners, and shall be from time to time invested by them in the purchase of other like stock to be placed to their account of unclaimed dividends.

All such dividends and the stock arising from the investment thereof shall be held by those Commissioners for the public, subject to the claims of the parties entitled thereto.

55. The Governor or Deputy Governor of the Bank of England or of Ireland may direct the accountant general or deputy accountant general or secretary or deputy or assistant secretary of that Bank to re-transfer any stock transferred under this part of this Act to any person showing his right thereto to the satisfaction of the Governor or Deputy Governor, and to pay the dividends due thereon, as if the same had not been transferred or paid to the National Debt Commissioners.

But in case the Governor or Deputy Governor is not satisfied of the right of any person claiming to be entitled to any such stock or dividends, the claimant may, by petition in a summary way, state and verify his claim to the Court of Chancery.

The petition shall be served on Her Majesty's Attorney General and on the National Debt Commissioners, and the Court shall make such order thereon (either for re-transfer of the stock to which the petition relates and payment of the dividends accrued thereon, or otherwise), and touching the costs of the application, as to the Court seems just.

All costs and expenses incurred by or on behalf of the Attorney General, or the National Debt Commissioners, in resisting or appearing on any such petition, if not ordered by the Court to be paid out of the stock and dividends thereby claimed, shall be paid by the National Debt Commissioners, out of unclaimed dividends.

Where any re-transfer or payment is made to any such claimant, either with or without the authority of the Court, the Bank of England or of Ireland (as the case requires) shall give notice thereof to the National Debt Commissioners, within three days after making the same.

56. Stock exceeding the sum of twenty pounds shall not be re-transferred from the National

Debt Commissioners under this part of this Act, nor shall dividends exceeding twenty pounds in the whole be paid to a claimant under this part of this Act, until three months after application made for the same, nor until public notice has been given thereof as in this part of this Act provided.

57. The Bank of England or of Ireland shall require the applicant to give such public notice as they think fit by advertisements, in the case of either Bank in one or more newspapers circulating in London and elsewhere, and in the case of the Bank of Ireland also in one or more newspapers circulating in Dublin and elsewhere in Ireland.

Every such notice shall state the name, residence, and description of the person in whose name the stock stood when transferred to the National Debt Commissioners, the amount thereof, the name of the claimant, and the time at which the re-transfer thereof and payment of dividends will be made if no other claimant sooner appears and makes out his claim.

Where any such re-transfer or payment is ordered by the Court of Chancery the notice shall also state the purport of the order.

58. At any time before re-transfer of stock or payment of dividend as aforesaid to a claimant any person may apply to the Court of Chancery, by motion or petition, to rescind or vary any order made for re-transfer or payment thereof.

59. Where any stock or dividends having been re-transferred or paid as aforesaid to a claimant by either Bank is or are afterwards claimed by another person, the Bank and their officers shall not be responsible for the same to such other claimant, but he may have recourse against the person to whom the re-transfer or payment was made.

60. Provided, that if in any case a new claimant establishes his title to any stock or dividends re-transferred or paid to a former claimant, and is unable to obtain transfer or payment thereof from the former claimant, the Court of Chancery shall, on application by petition by the new claimant, verified as the Court requires, order the National Debt Commissioners to transfer to him such sum in stock, and to pay to him such sum in money for dividend, as the Court thinks just.

Such transfer shall be made from stock transferred to the National Debt Commissioners under this part of this Act; and such money for dividend shall be paid from dividends received by those Commissioners on stock so transferred, or the accumulations thereof, or from the sale of

stock purchased with such dividends or accumulations, or from other money at their disposal.

61. Where any dividend accrued due on any sum of stock is not claimed for ten years before the last day on which a dividend thereon becomes payable, the dividend so unclaimed, and all dividends subsequently accrued due in respect of the same sum of stock, and unclaimed, shall be paid to the National Debt Commissioners.

All such dividends shall be held and dealt with in like manner, as nearly as may be, as stock transferred to those Commissioners under this part of this Act, or the dividends accruing thereon after the transfer (as the case requires); and this part of this Act shall accordingly have effect in relation thereto and to the investment and payment of and claims to the same, as if the foregoing provisions of this part of this Act were repeated and in terms made applicable thereto respectively.

62. All stock described in a stock certificate in respect of which no coupon is presented for payment for ten years shall be dealt with in like manner, as nearly as may be, as stock no dividend whereon is claimed for ten years.

Sums due and unclaimed on coupons shall be dealt with in like manner, as nearly as may be, as unclaimed dividends due in respect of stock.

63. The Treasury may from time to time empower the Bank of England or of Ireland to investigate the circumstances of any stock or dividends remaining unclaimed, with a view to ascertain the owners thereof, and allow to them such compensation as to the Treasury seems just for their trouble and expenses in that behalf.

64. The Treasury may from time to time allow to the Bank of England or of Ireland a reasonable compensation for all expenses incurred by them in and about notices and advertisements directed by this part of this Act, and other services required or authorised by this part of this Act.

65. Compensation allowed by the Treasury under this part of this Act may be deducted rateably from the stock and dividends from time to time re-transferred or paid, with reference to which the trouble, expenses, and services have been incurred and performed by the Bank, or the same may be paid by the National Debt Commissioners out of unclaimed stock or dividends transferred to or received by them.

66. The Banks of England and Ireland, and their respective governors, deputy governors, and officers, are hereby indemnified in respect of every transfer or re-transfer of stock or payment of

dividends under this part of this Act, and shall not be in any manner responsible to any person having or claiming any interest therein.

67. Where under any former Act relating to unclaimed stock or unclaimed dividends any stocks, funds, or annuities, or any principal or other sums, have, in consequence of the same or of the dividends thereon being unclaimed, been transferred to the National Debt Commissioners, or any unclaimed dividends have been paid to those Commissioners, this part of this Act shall have effect in relation to the stocks, funds, annuities, principal or other sums, and dividends so transferred and paid, and to any stock or security representing the same or any of them, and to all accumulations and investments of those dividends, in like manner, as nearly as may be, as if such transfer, payment, and investment were made after the passing of this Act under this part thereof.

68. This part of this Act shall apply to unclaimed annuities for terms of years forming part of the National Debt.

In the application thereto of this part of this Act, a terminable annuity exceeding one pound per annum shall be deemed to be substituted for stock exceeding twenty pounds.

In the enactment described in the second schedule to this Act, part IV., this part of this Act shall be deemed to be substituted for the Act of the fifty-sixth year of the reign of King George the Third in that enactment mentioned.

#### PART VIII.—MISCELLANEOUS.

69. In respect of each sum of one hundred and ten pounds of the two pounds ten shillings per centum annuities there shall continue to be paid to the National Debt Commissioners on the fifth day of July in each year until and inclusive of the fifth day of July one thousand eight hundred and ninety-four the sum of five shillings, and so in proportion for any less sum of such annuities.

That yearly sum shall continue to be charged on the Consolidated Fund and to be issued and paid thereout either to the Bank of England or to the Bank of Ireland to the account of the National Debt Commissioners, as those Commissioners from time to time direct, and to be applied towards the reduction of the National Debt as other money paid to them for that purpose is by law applicable.

A separate account shall continue to be kept by the National Debt Commissioners of the application of that yearly sum.

For the purposes of the Acts for regulating the reduction of the National Debt, that yearly sum

shall be deemed part of the expenditure of the United Kingdom.

70. No fee, reward, or gratuity shall be demanded or taken for paying any dividend, or for any transfer of stock, or for receiving any certificate or duplicate certificate under part VI. of this Act, on pain that any person offending by demanding or taking any such fee, reward, or gratuity shall for every such offence forfeit the sum of twenty pounds to the party aggrieved, with full costs of suit, to be recovered in any of Her Majesty's Superior Courts of Law in England or Ireland.

71. No stamp duty shall be payable in respect of any dividend, warrant, transfer of stock, stock certificate, or coupon.

72. The Bank of England shall continue a cor-

poration for the purposes of this Act until all stock is duly redeemed by Parliament.

73. Such of the provisions of parts III. and IV. of this Act as relate to receipt of dividends and transfer of stock by executors or administrators, and to evidence of title to dividends or stock, and to receipt of dividends on stock standing in the names of infants or persons of unsound mind, and to payments of dividends on stock by sending warrants through the post, shall apply to all stock of any company or corporation, funds or annuities, transferable in the books of the Bank of England or of Ireland.

74. The Bank of England or of Ireland, or any member of the corporation thereof respectively, shall not incur any disability for or by reason of those Banks respectively doing anything in pursuance of this Act.



#### SCHEDULES.

##### THE FIRST SCHEDULE.

##### *Stocks ; Dividend Days ; Redemption.*

Denominations of the several Stocks of Perpetual Annuities.	Dates of Half-yearly Dividends.	Periods of Redemption.
Consolidated Three pounds per centum annuities.	5 January, 5 July - - -	At any time after passing of this Act, subject and according to regulation subjoined.
Reduced Three pounds per centum annuities.	5 April, 5 October - - -	At any time after passing of this Act, subject and according to regulation subjoined.
New Five pounds per centum annuities.	5 January, 5 July - - -	At any time after 5 January 1873.
New Three pounds per centum annuities.	5 April, 5 October - - -	At any time after 10 October 1874.
New Three pounds ten shillings per centum annuities.	5 January, 5 July - - -	At any time after 5 January 1894.
Two pounds ten shillings per centum annuities.	5 January, 5 July - - -	At any time after 5 January 1894.

#### REGULATION.

The Consolidated Three pounds per centum annuities and the Reduced Three pounds per centum annuities respectively are redeemable as follows, namely :— At any time on one year's notice printed in the London Gazette, and affixed on the Royal Exchange in London, and on repayment by Parliament according to such notice of the several sums, or any part thereof, for which the said several annuities, or either of them, are or is payable, by payments not less than 500,000*l.* at one time, in manner directed by any Act to be passed, and also on full payment of all arrears of the same annuities. Then, and not till then, so much of the annuities as are attending on the principal sums so paid off, shall cease and be understood to be redeemed. Any vote or resolution of the House of Commons, signified by the Speaker in writing, inserted in the London Gazette, and affixed on the Royal Exchange in London, shall be deemed sufficient notice.

## THE SECOND SCHEDULE.

*Enactments referred to.*

## PART I.

5 & 6 Will. 4. c. 62.—An Act to repeal an Act of the present session of Parliament, intituled 'An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the State, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits'; and to make other provisions for the abolition of unnecessary oaths [which Act may be cited in any declaration made thereunder for the purposes of this Act as The Statutory Declarations Act, 1835].

## PART II.

21 & 22 Vict. c. 79.—An Act to amend the law relating to cheques or drafts on bankers.

## PART III.

Section four of 3 & 4 Will. 4. c. 24.—An Act to amend an Act of the tenth year of His late Majesty for regulating the reduction of the National Debt.

Section twenty-one of 18 & 19 Vict. c. 18.—An Act for raising the sum of sixteen millions by way of annuities.

## PART IV.

Section eleven of 2 & 3 Will. 4. c. 59.—An Act to transfer the management of certain annuities on lives from the receipt of His Majesty's Exchequer to the management of the Commissioners

for the Reduction of the National Debt, and to amend an Act for enabling the said Commissioners to grant life annuities and annuities for terms of years.

## THE THIRD SCHEDULE.

*Fees as to Stock Certificates.*

On the issue of a stock certificate, a fee not exceeding five shillings on every hundred pounds of stock included in the certificate, and a proportional sum for any less sum.

If the applicant is the registered holder of an amount of stock divisible into several sums of fifty pounds or multiples of fifty pounds he may require such sums of fifty pounds or such multiples of fifty pounds to be distributed amongst different certificates, as he thinks fit; subject to this proviso, that if the number of certificates required by him exceed the proportion of five to a thousand pounds he shall, in respect to each certificate constituting that excess, pay a sum of sixpence in addition to the per-centage fee.

On the change of a nominal certificate for a certificate to bearer, or on the registration in the books of the Bank of the stock included in a nominal certificate, there shall be charged a fee not exceeding one half the fee that would be chargeable on the issue of a new certificate to bearer.

On the registration in the books of the Bank of the stock included in a stock certificate to bearer there shall be charged a fee not exceeding five shillings.

## CHAP. 72.

*The Pedlars Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

*Preliminary.*

1. *Short title.*
2. *Commencement of Act.*
3. *Interpretation of certain terms in the Act.*

*Certificates to be obtained by Pedlars.*

4. *No one to act as a pedlar without certificate.*
5. *Grant of certificate.*
6. *Effect of certificate.*
7. *Certificate to be extended by indorsement to other districts than that for which it was granted.*
8. *Register of certificates to be kept in each district.*
9. *Forms of application to be kept at chief police office.*
10. *Certificate not to be assigned.*
11. *Certificate not to be borrowed.*

12. *Penalty for forging certificate.*
13. *Certificate not to be granted to certain persons.*
14. *Convictions to be indorsed on certificate.*
15. *Appeal against refusal of certificate by chief officer of police.*
16. *Court empowered to deprive pedlar of certificate.*

*Duties of Pedlars.*

17. *Pedlar to show certificate to certain persons, on demand.*
18. *Police empowered to inspect pedlar's pack.*

*Temporary Provisions.*

19. *Licenses granted before Act to remain in force.*

*Summary Proceedings for Offences.*

20. *Summary proceedings for offences.*
21. *Application of fees.*

*Saving.*

22. *Certificate not required by commercial travellers, sellers of fish, or sellers in fairs.*
23. *Reservation of powers of local authority.*

*Schedule.*

An Act for granting Certificates to  
Pedlars. (9th August 1870.)

WHEREAS it is expedient to amend the law relating to pedlars:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

*Preliminary.*

1. This Act may be cited as The Pedlars Act, 1870.

2. This Act shall not come into operation until the first day of January one thousand eight hundred and seventy-one, which date is in this Act referred to as the commencement of this Act.

3. In this Act, if not inconsistent with the context, the following terms have the meanings herein-after respectively assigned to them; that is to say,

The term "pedlar" means any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft:

The term "police district" means—

In England,—

- (1.) The city of London and the liberties thereof:
- (2.) The metropolitan police district:
- (3.) Any county, riding, part, division, or liberty of a county, borough, burgh, city, town, place, or union, or combination of places maintaining a separate police force; and all the police under one chief constable shall be deemed to constitute one force for the purposes of this section:

In Scotland,—

Any area maintaining a separate police force, and all the police under one chief constable, shall be deemed to constitute one force for the purposes of this section:

In Ireland,—

- (1.) The police district of Dublin metropolis:
- (2.) Any district, whether city, town, or country, over which is appointed a sub-inspector of the Royal Irish Constabulary.

The term "chief officer of police" means—

In England,—

- (1.) In the city of London and the liberties thereof the commissioner of city police:
- (2.) In the metropolitan police district, the commissioner of metropolitan police:
- (3.) Elsewhere the chief constable, or head constable, or other officer, by whatever name called, having the chief

command of the police in the police district in reference to which such expression occurs :

In Scotland,—

The chief constable, superintendent of police, or other officer, by whatever name called, having the chief command of the police in the police district in reference to which such expression occurs :

In Ireland,—

(1.) In the police district of Dublin metropolis, either of the commissioners of police for the said district :

(2.) In any other police district the sub-inspector of the Royal Irish Constabulary :

Any act or thing by this Act authorised to be done by the chief officer of police may be done by any person authorised by him in that behalf.

The term "court" includes the justice or justices, magistrate or magistrates, to whom jurisdiction is given by this Act.

#### *Certificates to be obtained by Pedlars.*

4. After the commencement of this Act no person shall act as a pedlar without such certificate as in this Act mentioned, or in any district where he is not authorised by his certificate so to act.

Any person who—

1. Acts as a pedlar without having obtained a certificate under this Act authorising him so to act :

2. Acts as a pedlar in any district in which he is not authorised so to act by a certificate granted under this Act,

shall be liable for a first offence to a penalty not exceeding ten shillings, and for any subsequent offence to a penalty not exceeding one pound.

5. The following regulations shall be made with respect to the grant of pedlars certificates :

1. Subject as in this Act mentioned a pedlar's certificate shall be granted to any person by the chief officer of police of the police district in which the person applying for a certificate resides, on such officer being satisfied that the applicant is a person of good character :

2. An application for a pedlar's certificate shall be in the form specified in the schedule to this Act, or as near thereto as circumstances admit :

3. There shall be paid for a pedlar's certificate previously to the delivery thereof to the applicant a sum not exceeding sixpence :

4. A pedlar's certificate shall be in the form specified in the schedule hereto, or as near thereto as circumstances admit :

5. A pedlar's certificate shall remain in force for one year from the date of the issue thereof and no longer :

6. On the delivery up of the old certificate or on sufficient evidence being produced to the satisfaction of the chief officer of police that the old certificate has been lost, that officer may either at the expiration of the current year, or during the currency of any year, grant a new certificate in the same manner as upon a first application for a pedlar's certificate.

6. A pedlar's certificate granted under this Act shall, during the time for which it continues in force, authorise the person to whom it is granted to act as a pedlar, within the police district in which such pedlar resides and the certificate is taken out.

7. Any pedlar who, having obtained a pedlar's certificate, desires to act as a pedlar in any other police district than that in which he resides, or who goes to reside in any other district, may, while his certificate remains in force, apply to the chief officer of police of such other district to indorse his certificate, and such officer shall, unless he is satisfied that the applicant is not a person of good character, on payment by the pedlar of a fee not exceeding sixpence, indorse such certificate, and such indorsed certificate shall, while it continues in force, authorise the pedlar to act as a pedlar in such other district, and have in all respects the same effect as a certificate granted under this Act by an officer of such district to a person resident therein would have.

The indorsement shall be in the form specified in the schedule to this Act, or as near thereto as circumstances admit.

8. There shall be kept in each police district a register of the certificates and of the indorsement of certificates granted and made in such district under this Act, in such form and with such particulars as may from time to time be directed by one of Her Majesty's Principal Secretaries of State.

The entries in such register, and any copy of any of such entries, if such copy shall have been certified by the chief officer of police, shall be evidence in any court of law of the facts stated therein.

9. Forms of application for certificates shall be kept at every police office in every police district, and shall be given gratis to any person applying for the same ; and all applications for certificates shall be delivered at the police office of the division or sub-division of the police district within which the applicant resides, and certificates, when

duly signed by the chief officer of police, shall be issued at such office.

10. A person to whom a pedlar's certificate is granted under this Act shall not lend, transfer, or assign the same to any other person, and any person who lends, transfers, or assigns such certificate to any other person shall for each offence be liable to a penalty not exceeding twenty shillings.

11. No person shall borrow or make use of a pedlar's certificate granted to any other person, and any person who borrows or makes use of such certificate shall for each offence be liable to a penalty not exceeding twenty shillings.

12. Any person who commits any of the following offences; (that is to say,)

1. Makes false representations with a view to obtain a pedlar's certificate under this Act :
2. Forges or counterfeits a pedlar's certificate granted under this Act :
3. Forges or counterfeits an indorsement made under this Act on such a certificate :
4. Aids in making or procures to be made such forged or counterfeited certificate or indorsement :
5. Travels with, produces, or shows any such forged or counterfeited certificate or indorsement,

shall for the first offence be liable to a penalty not exceeding two pounds, and for any subsequent offence, either instead of or in addition to such penalty, to be imprisoned for any term not exceeding six months with or without hard labour.

13. No certificate under this Act shall be granted to any person convicted of felony or of any misdemeanor involving dishonesty.

14. If any pedlar is convicted of any offence under this Act, the court before which he is convicted shall indorse or cause to be indorsed on his certificate a record of such conviction.

The indorsements made under this Act on a pedlar's certificate shall be evidence in any court of law of the facts stated therein.

15. If the chief officer of police refuses to grant or indorse a certificate, he shall, on demand, forthwith give to the applicant in writing his reasons for such refusal, and the applicant may appeal to a court having jurisdiction in the place in which the applicant resides, in accordance with the following provisions :—

1. The applicant shall, within one week after the refusal, give to the chief officer of police notice in writing of the appeal, and at the same time shall deposit with him

five shillings, for which such officer shall give a written receipt :

2. The appeal shall be heard at the sitting of the court which happens next after the expiration of the said week, but the court may, on the application of either party, adjourn the case :
3. The court shall hear and determine the matter of the appeal, and make such order thereon, with or without costs to either party, as to the court seems just :
4. If the appeal is dismissed the court may order the costs of the appeal, or any part thereof, to be paid out of the said deposit, but, subject to any such order, the deposit shall be repaid to the appellant :
5. The enactments relating to proceedings before the court shall apply to proceedings under this section, and any order made by the court in pursuance of this section may be enforced in the same manner as an order made by the court in the exercise of their ordinary jurisdiction, and any certificate, or indorsement of a certificate, granted or made in pursuance of an order of the court, shall have the same effect as if it had been originally granted or made by the chief officer of police.

For the purposes of this section the "court" shall be any court before which a penalty under this Act can be recovered.

16. Any court before which any pedlar is convicted of any offence, whether under this or any other Act, may, if he or they think fit, deprive such pedlar of his certificate.

#### *Duties of Pedlars.*

17. Any pedlar shall at all times on demand produce and show his certificate to any of the following persons; (that is to say,)

1. Any justice of the peace; or
2. Any constable or officer of police; or
3. Any person to whom such pedlar offers his goods for sale; or
4. Any person in whose private grounds or premises such pedlar is found :

And any pedlar who refuses on demand to show his certificate to, and allow it to be read and a copy thereof to be taken by, any of the persons hereby authorised to demand it, shall for each offence be liable to a penalty not exceeding five shillings; and it shall be lawful for any person so authorised, and also for any other person acting by his order or at his request and in his aid, to apprehend such offender and forthwith to convey or cause him to be conveyed before a justice of the peace; provided that no pedlar so apprehended shall on any pretence whatever be detained for a longer period than twelve hours



from the time of his apprehension until he is brought before a justice of the peace.

18. It shall be lawful for any constable or officer of police at any time to open and inspect any pack, box, bag, trunk, or case in which a pedlar carries his goods, wares, and merchandise, and any pedlar who refuses to allow such constable or officer to open or inspect such pack, box, bag, trunk, or case, or prevents or attempts to prevent him from opening or inspecting the same, shall be liable for each offence to a penalty not exceeding twenty shillings.

*Temporary Provisions.*

19. Any license to act as a hawker granted to any person before the commencement of this Act shall, notwithstanding the passing of this Act, continue in force till the date at which such license expires, and no person acting or trading as a hawker under such license shall during the time for which such license continues in force be required to obtain a pedlar's certificate under this Act, or be liable to any penalty for trading or acting as a pedlar without having obtained a certificate under this Act.

*Summary Proceedings for Offences.*

20. Any penalty under this Act may be recovered as follows:

In England, before two justices of the peace in manner directed by the Act of the eleventh and twelfth years of the reign of Her present Majesty, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Act amending the same:

In Scotland, in manner directed by the "Summary Procedure Act, 1864:"

In Dublin, in manner directed by the Acts regulating the powers of justices of the peace, or of the police of Dublin metropolis, and in all other parts of Ireland by the "Petty Sessions, Ireland, Act, 1851."

21. All fees received under this Act shall be applied in manner in which penalties recoverable under this Act are applicable.

*Saving.*

22. Nothing in this Act shall render it necessary for a certificate to be obtained by the following persons; (that is to say,)

1. Commercial travellers or other persons selling or seeking orders for goods, wares, or merchandise to or from persons who are dealers therein and who buy to sell again:

2. Sellers of vegetables, fish, fruit, or victuals.  
3. Persons selling or exposing to sale goods, wares, or merchandise in any public mart, market, or fair legally established.

23. Nothing in this Act shall take away or diminish any of the powers vested in any local authority by any general or local Act in force in the district of such local authority.

SCHEDULE.

FORM A.

FORM OF APPLICATION FOR PEDLAR'S CERTIFICATE.

1. I, A.B. [*Christian and surname of applicant in full*] reside at \_\_\_\_\_ in the parish of \_\_\_\_\_ in the county of \_\_\_\_\_.

2. I am by trade and occupation a [*here state trade and occupation of applicant, e.g., that he is a hawker, pedlar, &c.*]

3. I apply for a certificate under the Pedlars Act, 1870, authorising me to act as a pedlar within the \_\_\_\_\_ police district.

Dated the \_\_\_\_\_ day of \_\_\_\_\_

(Signed) A.B. [*Here insert Christian and surname of applicant.*]

FORM B.

FORM OF PEDLAR'S CERTIFICATE.

In pursuance of The Pedlars Act, 1870, I certify that A.B. [*name of applicant*] of \_\_\_\_\_ in the county of \_\_\_\_\_ is hereby authorised to act as a pedlar within the \_\_\_\_\_ police district for a year from the date of this certificate.

Certified this \_\_\_\_\_ day of \_\_\_\_\_ A.D. (Signed) \_\_\_\_\_ [*Here insert name and description of the officer signing the certificate.*]

This certificate will expire on the \_\_\_\_\_ day of \_\_\_\_\_ A.D.

FORM C.

FORM OF INDORSEMENT OF PEDLAR'S CERTIFICATE.

The within-named [*here insert Christian and surname of pedlar*] is hereby authorised to act as pedlar up to and until the \_\_\_\_\_ day of \_\_\_\_\_, the day on which his certificate expires, within the police district of \_\_\_\_\_.

(Signed) \_\_\_\_\_ [*Here insert name and description of the chief officer of police by whom the certificate is indorsed.*]

## CHAP. 73.

*The Annual Turnpike Acts Continuance Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Repeal of certain Acts. Schedule 1.*
2. *Expiration of certain Acts. Schedule 2.*
3. *Repeal of certain Acts. Schedule 3.*
4. *Expiration of certain Acts. Schedule 4.*
5. *Repeal of certain Acts. Schedule 5.*
6. *Continuance of certain Acts. Schedule 6.*
7. *Repeal of certain Turnpike Acts. Schedule 7.*
8. *Continuance of certain Acts. Schedules 8. and 9.*
9. *Continuance of all other Turnpike Acts, except 7 G. 4. c. xc.; 5 W. 4. c. xxiii.; 13 & 14 Vict. c. ciii.; 9 G. 4. c. cxii.; 12 & 13 Vict. c. lxxvi.; 18 Vict. c. lxxvii.*
10. *Maintenance of certain highways.*
11. *Stone, &c. to be raised within any highway district.*
12. *Bridges to become county bridges.*
13. *Turnpike roads extending into two counties.*
14. *Short title.*  
*Schedules.*

An Act to continue certain Turnpike Acts in Great Britain, to repeal certain other Turnpike Acts, and to make further Provisions concerning Turnpike Roads.

(9th August 1870.)

WHEREAS it is expedient to continue for limited times some of the Acts herein-after specified, and to repeal others:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Acts specified in the first schedule annexed hereto shall be repealed on and after the first day of November one thousand eight hundred and seventy.

2. The Acts specified in the second schedule annexed hereto shall expire at the time in that behalf mentioned in "The Annual Turnpike Acts Continuance Act, 1869."

3. The Acts specified in the third schedule annexed hereto shall be repealed on and after the date in that behalf mentioned in "The Annual Turnpike Acts Continuance Act, 1869."

4. The Acts specified in the fourth schedule annexed hereto shall continue in force until the thirty-first day of December one thousand eight hundred and seventy, and no longer.

5. The Acts specified in the fifth schedule annexed hereto shall be repealed on and after the thirty-first day of May one thousand eight hundred and seventy-one.

6. The Acts specified in the sixth schedule annexed hereto shall continue in force until the first day of November one thousand eight hundred and seventy-one, and no longer, unless Parliament in the meantime otherwise provides.

7. The Acts specified in the seventh schedule annexed hereto shall be repealed on and after the first day of November one thousand eight hundred and seventy-one, unless Parliament in the meantime otherwise provides.

8. The Acts specified in the eighth and ninth schedules annexed hereto shall continue in force until the first day of November one thousand eight hundred and seventy-one, and in the case of each trust for such further time, if any, as may be required to complete the term of one year, not later than the first day of June one thousand eight hundred and seventy-two, from the time for which the tolls, or any of them, shall have been let at the last meeting of such trust held for that purpose, unless Parliament in the meantime otherwise provides.

9. All other Acts now in force for regulating, making, amending, or repairing any turnpike road in Great Britain which will expire at or before the end of the next session of Parliament shall continue in force until the first day of November one thousand eight hundred and

seventy-one, and to the end of the then next session of Parliament, unless Parliament in the meantime otherwise provides, except the three following Acts, namely, An Act of the seventh year of King George the Fourth, chapter ninety, "for making a turnpike road from Saint John's Chapel, in the parish of Saint Marylebone, to the north-east end of Ballard's Lane, abutting upon the north road in the parish of Finchley, with a branch therefrom in the county of Middlesex;" An Act of the fifth year of King William the Fourth, chapter twenty-three, "to incorporate the Avenue Road in the parish of Saint Marylebone with the Marylebone and Finchley Turnpike Roads in the county of Middlesex;" An Act of the thirteenth and fourteenth years of Her present Majesty, chapter one hundred and three, "for continuing the term of an Act passed in the seventh year of the reign of His Majesty King George the Fourth, intituled An Act for making a turnpike road from Saint John's Chapel in the parish of Saint Marylebone to the north-east end of Ballard's Lane, abutting upon the north road in the parish of Finchley, with a branch therefrom in the county of Middlesex, for the purpose of paying off the debt now due on the said roads, and providing for the future management thereof," which shall continue until the several debts have been paid off and discharged, and no longer; and except the three following Acts, namely, An Act of the ninth year of King George the Fourth, chapter one hundred and twelve, "for more effectually repairing and improving the several roads called the Cannon Street Roads, the Commercial Road, the Horse-ferry Branch of Road, the East India Dock Road, the Barking Road, and the Shadwell and Mile End Branch of Road in the counties of Middlesex and Essex, and for laying down a stoneway on the said Commercial, East India Dock, and Barking roads;" An Act of the twelfth and thirteenth years of Her present Majesty, chapter seventy-six, "for more effectually repairing the Commercial Road, and other roads connected therewith, in the counties of Middlesex and Essex;" An Act of the eighteenth year of Her present Majesty, chapter sixty-seven, "for amending The Commercial Roads Act, 1828, and The Commercial Roads Continuation Act, 1849, and for other purposes," which shall continue in force till the fifth day of August one thousand eight hundred and seventy-one, and no longer.

10. With regard to any highway which within seven years previous to the passing of this Act

has ceased, or which hereafter may cease to be a turnpike road, the cost of maintaining so much thereof as passes through any highway district constituted under the Highway Acts, 1862 and 1864, shall after the thirty-first day of December one thousand eight hundred and seventy, or after the date of the said highway ceasing to be a turnpike road, whichever shall last happen, be a charge on the common fund of such highway district, and shall be annually provided for in the same manner as is enacted in the thirty-second section of the Highway Act, 1864, in respect to the salaries of the officers appointed for the district.

11. It shall be lawful for any surveyor of any highway district to raise stone or other material within any highway district for the repair of any turnpike road which may be thrown upon any highway district by the preceding clause of this Bill, in the same manner and with the like powers, and on payment of such compensation for the same, as the trustees of a turnpike road are now empowered by law to do.

12. Where a turnpike road shall have become an ordinary highway, all bridges which were previously repaired by the trustees of such turnpike road shall become county bridges, and shall be kept in repair accordingly.

Provided that for the purposes of this Act such bridges shall be treated as if they were bridges built subsequently to the passing of the Act of the fifth and sixth years of His late Majesty King William the Fourth, chapter fifty, intituled "An Act to consolidate and amend the laws relating to Highways in that part of Great Britain called England."

13. Where a turnpike road extending into two or more counties shall become an ordinary highway, in lieu of the certificate required by the seventh section of "The Annual Turnpike Acts Continuance Act, 1868," to be given by two justices before the trustees can award compensation to their officers, there shall be required a certificate by two justices of each county into which such turnpike road may extend, and each of such certificates shall certify that such part of the road as lies within the county for which the justices giving the certificate are acting, was, at the time at which it became an ordinary highway, in complete and effectual repair.

14. This Act may be cited for all purposes as "The Annual Turnpike Acts Continuance Act, 1870."



## SCHEDULES.

County.	Name of Trust.	No. of Schedule.	No. of Ast.
Bucks	Colnbrook, Datchet, and Slough	3	31
Cambridge	Arrington	2	11
	Stump Cross	5	36
Chester	Spann Smithy, Booth Lane, and Winsford	2	13
Cumberland	Whitehaven	2	20
Derby	Nottingham Road, Derby to Risley	6	45
Durham	Bowes and Sunderland Bridge	2	9, 10
	Gateshead and Hexham	7	57
	Wearmouth Bridge to Tyne Bridge	3	30
Essex	Hockerill	2	21
Gloucester	Chipping Campden	1	1
Kent	Dartford and Strood	6	39
	Greenwich and Woolwich, Lower Road	1	8a
Lancaster	Barton Bridge and Moses Gate	6	42
	Liverpool, Prescot, Ashton, and Warrington	6	47
	Pendleton	6	53
	Penwortham and Wrightington	2	17
Lincoln	Bourn	6	40
	Foston Bridge to Witham Common	2	22
Norfolk	Lynn and Wisbech	2	15
	Stoke Ferry	1	2
Northampton	Banbury and Lutterworth, Banbury to Drayton	} 5	35
	Ditto Lutterworth to Badby		
	Dunchurch	2	19
	Kettering and Northampton	7	56
	Peterborough and Wellingborough, Clapton Branch	1	8
	Wansford and Stamford	6	40
	Warwick and Northampton	2	26
Nottingham	Nottingham and Derby, Eastern Division	2	18
Rutland	Oakham	6	37
Somerset	Bridgewater	4	33
	Frome	2	23
	Wiveliscombe	7	54
Stafford	Birmingham and Wednesbury	2	24
	Walton-in-Stone to Eccleshall	6	52
Sussex	Broil Park Gate to Battle	6	38
	Lewes and Brighton	2	27
	Midhurst and Sheetbridge	6	41
Warwick	Birmingham and Watford Gap, Kingsbury Branch	6	43
Westmorland	Appleby and Kendal	1	7
Wilts	Amesbury	6	48a
	Trowbridge	3	32
Worcester	Dudley and Brettell Lane, and Pedmore and Rowley,	} 6	48
	United		
	Tenbury	7	55
	Worcester :	2	14
	Barbourne Roads (7th Dist.)	} -	28, 29
	Bransford Roads (4th " )		
	Broadwas Roads (5th " )		
	Henwick & Martley Rds. (6th " )		
	London & Stonebow Rds. (1st " )		
	Powick Roads (3rd " )		
	Upton Roads (2nd " )		
	Lowesmoor Roads (8th " )	1	4, 6

County.	Name of Trust.	No. of Schedule.	No. of Act.
York	Barnsley and Pontefract - - - -	1	3
	Birstal and Huddersfield - - - -	6	46, 49
	Dewsbury to Ealand - - - -	6	50
	Doncaster and Bawtry - - - -	2	25
	Doncaster and Saltersbrook - - - -	6	44
	Dudley Hill, Killinghall, and Harrogate - - - -	6	51
	Kirkstall, Otley, and Shipley - - - -	4	34
	Salterhebble, Stainland, and Sowerby Bridge - - - -	1	5
	Wetherby and Knaresborough - - - -	2	16
	York and Boroughbridge - - - -	2	12

## FIRST SCHEDULE.

Acts which are to be repealed on and after the 1st of November 1870.

Date of Act.	Title of Act.
57 G. 3. c. v. - <i>Limited to expire at end of session after 1 November 1870.</i>	1. An Act for repairing the road from the Cross Hands on the Worcester and Oxford Turnpike Road to Halford Bridge, and other roads therein mentioned, in the counties of Gloucester, Warwick, and Worcester.
2 W. 4. c. lxxxiii. - <i>Limited to expire at end of session after 1 Nov. 1870.</i>	2. An Act for more effectually repairing several roads leading from the Bell in Stoke Ferry in the county of Norfolk.
3 W. 4. c. xiii. - <i>Limited to expire at end of session after 1 Nov. 1870.</i>	3. An Act for repairing and improving the road from Barnsley to Cudworth Bridge, and from thence into the turnpike road leading from Wakefield to Doncaster, and other roads connected therewith, all in the West Riding of the county of York.
5 & 6 W. 4. c. lxiii. - <i>Limited to expire at end of session after 1 Nov. 1870.</i>	4. An Act for improving and more effectually repairing the several roads leading into and from the city of Worcester; so far as the same relates to the eighth district of roads.
1 Vict. c. xlii. - <i>Limited to expire at end of session after 1 Nov. 1870.</i>	5. An Act for repairing and maintaining a road from near Salterhebble in the parish of Halifax to the Huddersfield and New Hey Turnpike Road in the parish of Huddersfield, and to Sowerby Bridge in the said parish of Halifax, all in the West Riding of the county of York, with a bridge on the line of the said road.
11 & 12 Vict. c. cxxxvii. - <i>Limited to expire at end of session after 1 Nov. 1870.</i>	6. An Act to enable the trustees of the Worcester Turnpike Road to make certain new roads, and to improve and more effectually maintain the several roads leading into and from the city of Worcester; so far as the same relates to the eighth district of roads.
14 Vict. c. xiii. - <i>Limited to expire at end of session after 31 Oct. 1872.</i>	7. An Act for keeping in repair the road from Appleby in the county of Westmoreland to Kirkby-in-Kendal, and from Orton to the turnpike road near Shap, and from Highgate, near Tebay, through Kirkby Stephen, to Market Brough in the said county.
18 & 19 Vict. c. cvii. - <i>Limited to expire on payment of debt.</i>	8. An Act to repeal the Act relating to the Peterborough and Wellingborough turnpike road, and to make other provisions in lieu thereof, so far as the same relates to the Clapton branch of road.
29 & 30 Vict. c. cxxii. - <i>Limited to expire at end of session after 1 Nov. 1871.</i>	8a. An Act for continuing the term and provisions of the several statutes relating to the Greenwich and Woolwich turnpike lower road in the county of Kent.

## SECOND SCHEDULE.

Acts which are to expire at the Date (1st November 1870) mentioned in 32 & 33 Vict. c. 90.

Date of Act.	Title of Act.
53 G. 3. c. xxv. -	9. An Act for continuing and amending an Act of His present Majesty, for repairing the roads leading from Bowes in the county of York, through Barnard Castle and Bishop Auckland, to join the Great North Road near Sunderland Bridge in the county of Durham.
56 G. 3. c. xxxiii. -	10. An Act to rectify a mistake in an Act of the fifty-third year of His present Majesty, for repairing the roads from Bowes in the county of York to join the Great North Road near Sunderland Bridge in the county of Durham.
57 G. 3. c. lxviii. -	11. An Act for enlarging the term and powers of an Act of His present Majesty, for repairing the road from Cambridge to the Old North Road, near Arrington Bridge in the county of Cambridge.
58 G. 3. c. ii. -	12. An Act to continue the terms and alter and enlarge the powers of three Acts passed in the twenty-third year of the reign of His late Majesty King George the Second, and in the eleventh and thirty-seventh years of His present Majesty's reign, for repairing the road from the city of York to Boroughbridge in the county of York.
3 G. 4. c. xlviii. -	13. An Act for more effectually repairing and widening the roads from Spann Smithy, through Middlewich and by Spittle Hill in Stanthorn, to Winsford Bridge, and from Spittle Hill to Northwich in the county palatine of Chester.
4 G. 4. c. xxv. -	14. An Act for more effectually amending, widening, and keeping in repair several roads in and near to the town of Tenbury in the counties of Salop, Worcester, and Hereford, and the roads leading from the Knowle Gate to the turnpike road on the Clee Hill, and from Kyre Mill to the turnpike road leading from Bromyard to Tenbury.
4 G. 4. c. lv. -	15. An Act for more effectually amending the roads from the Little Bridge over the end of the drain near Wisbeach River, lying between Roper's Fields and the Bell Inn in Wisbeach in the Isle of Ely, to the west end of Long Bridge in South Lynn in the borough of King's Lynn in the county of Norfolk, and for amending, improving, and keeping in repair certain other roads therein mentioned, in the said county of Norfolk.
5 G. 4. c. viii. -	16. An Act for amending, improving, and keeping in repair the roads leading from Wetherby to Knaresborough in the West Riding of the county of York.
6 G. 4. c. ii. -	17. An Act for repairing and maintaining the road from Penwortham Bridge to the boundary between the townships of Wrightington and Shevington, and the road from Lydiate Lane End to a bridge called Little Hanging Bridge, all in the county of Lancaster.
7 & 8 G. 4. c. xxvii. -	18. An Act for more effectually repairing and otherwise improving the road from the east end of Chapel Bar in Nottingham to the New China Works near Derby, and from the Guide Post in the parish of Lenton to Sawley Ferry, all in the counties of Nottingham and Derby; <i>so far as the same relates to the Eastern Division.</i>
7 & 8 G. 4. c. liv. -	19. An Act for repairing the road from Dunchurch to Hillmorton in the county of Warwick, and from thence to Saint James's End in the parish of Duston in the county of Northampton.
9 G. 4. c. x. -	20. An Act for more effectually repairing and improving the roads leading to and from the port, harbour, and town of Whitehaven in the county of Cumberland.

Date of Act.	Title of Act.
10 G. 4. c. xxi. -	21. An Act for more effectually repairing, widening, and improving the road from Harlow Bush Common, in the parish of Harlow in the county of Essex, to Stump Cross in the parish of Great Chesterford in the same county, and for making and maintaining two new lines of road communicating therewith.
11 G. 4. & 1 W. 4. c. xc.	22. An Act for repairing the road from Foston Bridge to the Division Stone on Witham Common in the county of Lincoln.
1 & 2 W. 4. c. lxvi. -	23. An Act for better repairing and improving several roads leading to and from the town of Frome in the county of Somerset.
2 W. 4. c. vi. -	24. An Act for more effectually maintaining and improving the roads from Birmingham to Wednesbury, and to Great Bridge, and from thence to the Portway adjoining the Bilston and Wednesbury turnpike road, and to Nether Trindle near Dudley, and from Trowse Lane in the parish of Wednesbury to Darlaston, in the counties of Warwick, Stafford, and Worcester; and for making new branches of road communicating therewith.
2 W. 4. c. xx. -	25. An Act for more effectually repairing and otherwise improving the road from Doncaster to Bawtry in the county of York.
2 W. 4. c. xcvi. -	26. An Act for repairing and improving the road from the Great Bridge in the borough of Warwick, through Southam and Daventry, to the town of Northampton.
3 W. 4. c. xliii. -	27. An Act for more effectually repairing the road from Lewes to Brighthelmston in the county of Sussex.
5 & 6 W. 4. c. lxiii. -	28. An Act for improving and more effectually repairing the several roads leading into and from the city of Worcester; <i>so far as the same relates to the first, second, third, fourth, fifth, sixth, and seventh districts of roads.</i>
11 & 12 Vict. c. cxxxvii.	29. An Act to enable the trustees of the Worcester Turnpike Road to make certain new roads, and to improve and more effectually maintain the several roads leading into and from the city of Worcester; <i>so far as the same relates to the first, second, third, fourth, fifth, sixth, and seventh districts of roads.</i>

## THIRD SCHEDULE.

Acts which are to be repealed on or after the date (1st November 1870) mentioned in 32 & 33 Vict. c. 90.

Date of Act.	Title of Act.
2 Vict. c. xxii. - <i>Limited to expire at end of session after 1 September 1870.</i>	30. An Act for more effectually repairing and improving the road from Wearmouth Bridge to Tyne Bridge, with a branch from the said road to the town of South Shields, all in the county of Durham.
4 Vict. c. xxxiii. - <i>Limited to expire at end of session after June 1872.</i>	31. An Act for more effectually repairing the road from Cranford Bridge to Maidenhead Bridge, with roads thereout to Eton Town End, and to the Great Western Railway, and from Langley Broom to Datchet Bridge, all in the counties of Middlesex and Bucks.
17 & 18 Vict. c. lxxv. <i>Limited to expire at end of session after 1 November 1875.</i>	32. An Act to create a further term in the Trowbridge roads, to add other roads to the trust, to amend and extend the Act relating to the said roads; and for other purposes.

## FOURTH SCHEDULE.

Acts which are to continue until the 31st of December 1870, and no longer.

Date of Act.	Title of Act.
3 G. 4. c. lxxv. - -	33. An Act to repeal several Acts passed for repairing several roads leading to the town of Bridgewater in the county of Somerset, and several other roads therein mentioned, so far as the said Acts relate to the roads leading to the said town, and to consolidate and comprise the same in one Act of Parliament.
1 & 2 Vict. c. lxxvii. -	34. An Act to vary and alter the lines of the Kirkstall, Ilkley, and Shipley district of road, and for making a new road from the Otley branch road in the said district to Burley in the parish of Otley, all in the West Riding of the county of York.

## FIFTH SCHEDULE.

Acts which are to be repealed on the 31st of May 1871.

Date of Act.	Title of Act.
3 Vict. c. xxxviii. - <i>Limited to expire at end of session after 19 May 1871.</i>	35. An Act for repairing and maintaining a road from Banbury in the county of Oxford to Lutterworth in the county of Leicester, and other roads communicating therewith.
4 Vict. c. xx. - - <i>Limited to expire at end of session after 1 June 1872.</i>	36. An Act for maintaining certain roads in the county of Cambridge, to be called "The Stumpcross Roads."

## SIXTH SCHEDULE.

Acts which are to continue until the 1st of November 1871, and no longer, unless Parliament in the meantime otherwise provides.

Date of Act.	Title of Act.
57 G. 3. c. xlvi. - -	37. An Act for continuing and amending an Act of His present Majesty, for repairing the road from Stamford in the county of Lincoln, through Oakham, to the Great North Road in the parish of Greetham in the county of Rutland.
1 & 2 G. 4. c. xxvii. -	38. An Act for more effectually making, repairing, and improving the road from near the place where the Broil Park Gate formerly stood to the Horsebridge Turnpike Road on the Dicker, and from the Blacksmith's Shop in Horsebridge Street to the town of Battle in the county of Sussex.
3 G. 4. c. lxx. - -	39. An Act for repairing, widening, and maintaining the road leading from Dartford to and through Northfleet and Gravesend, and thence to the Stones End near the parish church of Strood in the county of Kent.
4 G. 4. c. cxi. - -	40. An Act for more effectually repairing the road from Wansford Bridge in the county of Northampton to Stamford, and from Stamford to Bourn in the county of Lincoln.



Date of Act.	Title of Act.
6 G. 4. c. xi. - -	41. An Act for making and maintaining a turnpike road from Midhurst in the county of Sussex, to the London and Portsmouth Turnpike Road between the fifty-second and fifty-third milestones near Sheet Bridge in the county of Southampton.
6 G. 4. c. xlvii. - -	42. An Act for more effectually amending, widening, and maintaining the road from Barton Bridge in the parish of Eccles, through the township of Worsley, to Moses Gate in the township of Farnworth, and for making, repairing, and improving other roads to communicate therewith, all in the county palatine of Lancaster.
7 G. 4. c. xxii. - -	43. An Act for repairing the road from Birmingham to Watford Gap in the parish of Sutton Coldfield in the county of Warwick, and other roads communicating therewith; <i>so far as the same relates to the Kingsbury Branch Road.</i>
7 G. 4. c. cxxx. - -	44. An Act for more effectually improving the roads from Doncaster to Salter's Brook Bridge, and for diverting and altering the said roads, and making certain branches therefrom, all in the county of York.
7 & 8 G. 4. c. xxvii. -	45. An Act for more effectually repairing and otherwise improving the road from the east end of Chapel Bar in Nottingham to the New China Works near Derby, and from the Guide Post in the parish of Lenton to Sawley Ferry, all in the counties of Nottingham and Derby; <i>so far as the same relates to the road from Derby to Risley.</i>
9 G. 4. c. lxxxiii. -	46. An Act for amending, diverting, and improving the present roads, and making and maintaining certain new roads between the towns of Birstal and Huddersfield in the West Riding of the county of York.
1 & 2 W. 4. c. xxix. -	47. An Act for more effectually repairing, amending, and improving the roads from Liverpool to Prescott, Ashton, and Warrington, in the county palatine of Lancaster.
2 W. 4. c. lxxxiv. -	48. An Act for maintaining and improving certain roads within the counties of Worcester and Stafford called "The Dudley and Brettell Lane District of Roads," and for making several Branches from such roads.
5 W. 4. c. xxxviii. -	48a. An Act for more effectually repairing the road from Mullen's Pond in the county of Southampton, through Amesbury, to the Eighteen Milestone from the city of New Sarum near Willoughby Hedge in the county of Wilts, and several other roads leading out of the said road.
6 W. 4. c. lxxxv. -	49. An Act to amend an Act passed in the ninth year of the reign of King George the Fourth, for diverting, improving, and maintaining the roads between the towns of Birstal and Huddersfield in the West Riding of the county of York.
6 & 7 W. 4. c. cxviii. -	50. An Act for repairing, maintaining, and improving the road from Dewsbury to Ealand in the West Riding of the county of York.
1 & 2 Vict. c. xciv. -	51. An Act for more effectually repairing, improving, and maintaining the Dudley Hill and Killinghall Turnpike Road, and for making a new road therefrom to communicate with the Leeds and Harrogate Turnpike Road, all in the West Riding of the county of York.
6 & 7 Vict. c. xxvi. -	52. An Act for repairing and improving certain roads in the neighbourhood of Trentham and Stone in the county of Stafford, and for making and maintaining a new road from Trentham Inn to the Newcastle-under-Lyme and Market Drayton Turnpike Road in the same county, and another new piece of road in the parish of Trentham aforesaid; <i>so far as the same relates to the Walton in Stone to Eccleshall, or Second District of Roads.</i>
16 & 17 Vict. c. cxxxv.	53. An Act for more effectually repairing and improving several roads leading to and from the town of Salford, through Pendleton, and other places in the county palatine of Lancaster.

## SEVENTH SCHEDULE.

Acts which are to be repealed on and after the 1st of November 1871, unless Parliament in the meantime otherwise provides.

Date of Act.	Title of Act.
14 Vict. c. xx. - - <i>Limited to expire at end of session after 20 May 1872.</i>	54. An Act for maintaining in repair several roads leading from and through the town of Wiveliscombe in the county of Somerset, and the roads adjoining thereto in the counties of Somerset and Devon.
15 Vict. c. lxxxvi. - <i>Limited to expire at end of session after 21 October 1873.</i>	55. An Act to repeal the Acts and parts of Acts relating to the Pedmore and Holly Hall Districts of Roads, and to substitute other provisions for the same.
15 Vict. c. xcix. - <i>Limited to expire at end of session after 30 October 1873.</i>	56. An Act to repeal an Act for repairing the road from Kettering to the town of Northampton in the county of Northampton, and to substitute other provision in lieu thereof.
18 & 19 Vict. c. clxxvi. <i>Limited to expire at end of session after 1 November 1876.</i>	57. An Act for maintaining and improving the road from Gateshead in the county of Durham to the Hexham Turnpike Road near Dilston Bar in the county of Northumberland, and other roads connected therewith.

## EIGHTH SCHEDULE.

(Turnpike Trusts out of Debt and continued by the Annual Turnpike Acts Continuance Act.)

Acts which are to continue until the 1st of November 1871, and in the case of each trust for such further time, if any, as may be required to complete the term of one year, not later than 1st June 1872, from the time for which the tolls, or any of them, shall have been let at the last meeting of such trust held for that purpose, unless Parliament in the meantime otherwise provides.

County.	Name of Trust.	No. of Trust.
Bedford -	Puddlehill - - - - -	2
Cambridge -	Hauxton and Dunsbridge - - - - -	38
	Paper Mills - - - - -	3
Cumberland -	Kingstown and Westlinton Bridge - - - - -	35
	Longtown - - - - -	42
Gloucester -	Cheltenham and Tewkesbury - - - - -	6
	Maisemore - - - - -	56
	Northgate - - - - -	33
	Over - - - - -	56
	Stow and Moreton, United - - - - -	4, 7, 16, 23, 48
	Tewkesbury - - - - -	32
Hants - -	Portsmouth and Sheetbridge - - - - -	11
	Southampton, South District - - - - -	20
	Winchester, Upper District - - - - -	5
Hertford -	Cheshunt - - - - -	55
	Wadesmill - - - - -	8
Kent - -	Dover to Barham Downs - - - - -	22
	Tonbridge - - - - -	60, 61
	Whitstable - - - - -	25

County.	Name of Trust.	No. of Trust.
Lancaster	Crossford Bridge and Manchester	44, 63
Leicester	Manchester and Saltersbrook	30, 57
	Bridgford Lane and Kettering, South Part of Northern Division.	21
	Burton Bridge to Market Bosworth	45
	Melton Mowbray	29
Lincoln	Bridge End	28
	Deeping and Morcott	40
Monmouth	Chepstow	15
Norfolk	Lynn, East Gate	47
	Norwich, Swaffham, and Mattishall	59
Northampton	Buckingham and Hanwell, Lower Division	50
	Market Harborough and Welford	18
Northumberland	Alemouth and Hexham, Eastern District	13
	Alnwick and Eglingham	31
	Wooler and Adderstone	27
Nottingham	Bawtry and Scrooby	1
	Bingham	10
	Foston Bridge and Little Drayton	9
	Nottingham and Kettering, Northern Division	21
Oxford	Burford, Chipping Norton, Banbury, and Aynho	48
	Drayton Lane to Edgehill	17
	Gosford Road	14
Rutland	Nottingham and Kettering, Southern Division	21
Somerset	Radstock	43
Stafford	Ashby-de-la-Zouch to Tutbury	26
	Newcastle-under-Lyme and Drayton	52
	Streetway and Wordsley Green, and Wolverhampton and Cannock.	41
	Tamworth	51
Suffolk	Ipswich to South Town, and Darsham to Bungay	39
Sussex	Horsebridge and Horeham	19
Warwick	Birmingham and Spermal Ash	37
	Birmingham and Stratford-on-Avon	12
	Dunchurch to Stonebridge	24
	Great Kington and Wellesbourne	54
	Warwick, Paddlebrook, and Stratford	34
	Wellesbourn and Stratford	53
Worcester	Birmingham and Bromsgrove	46
	Evesham, First District, Pershore Division	16
York	Boroughbridge and Durham (part)	49
	Leeds and Harrogate	62
	Tadcaster Bridge and Hob Moor Lane End	58
	York to Kexby Bridge, and Grimston to Stone Dale	36

Date of Act.	Title of Act.
53 G. 3. c. xi.	1. An Act for enlarging the term and powers of two Acts of His present Majesty, for repairing and widening the road from Bawtry in the county of York to East Markham Common in the county of Nottingham, and from Little Drayton to Twyford Bridge in the said county of Nottingham.
54 G. 3. c. cxxi.	2. An Act for continuing and amending an Act of His present Majesty, for repairing the road from Dunstable to Hookcliffe in the county of Bedford.

Date of Act.	Title of Act.
55 G. 3. c. xlix. - -	3. An Act for more effectually repairing the road from Jesus Lane in the town of Cambridge to Newmarket Heath in the county of Cambridge.
56 G. 3. c. i. - -	4. An Act for enlarging the term and powers of two Acts of His present Majesty, for repairing the road from Chapel on the Heath in the county of Oxford to Bourton on the Hill in the county of Gloucester.
57 G. 3. c. xxvi. - -	5. An Act for amending the roads leading from Basingstone near Bagshot, through Farnham in the county of Surrey, and Alton and New Alresford, to Winchester in the county of Southampton; <i>so far as the same relates to the Upper District of Roads.</i>
58 G. 3. c. v. - -	6. An Act for enlarging the term and powers of two Acts of His present Majesty, for repairing the roads leading from the city of Gloucester towards Cheltenham and Tewkesbury in the county of Gloucester.
59 G. 3. c. cxxiv. -	7. An Act for enlarging the term and powers of an Act, passed in the thirty-fourth year of the reign of His present Majesty, for repairing the roads leading from the town of Tewkesbury in the county of Gloucester, and other roads therein mentioned, so far as such Act relates to the road from Stump Cross in the parish of Didbrook to Stow-on-the-Wold in the county of Gloucester.
1 & 2 G. 4. c. xvii. -	8. An Act for continuing and amending four Acts of their late Majesties King George the Second and King George the Third, for repairing the roads leading from Wades Mill in the county of Hertford to Barley and Royston in the said county.
1 & 2 G. 4. c. xxix. -	9. An Act for continuing the term and amending, altering, and enlarging the powers of an Act of His late Majesty's reign for more effectually repairing the road from Foston Bridge in the county of Lincoln to Little Drayton in the county of Nottingham.
1 & 2 G. 4. c. xxx. -	10. An Act for more effectually repairing and improving the road from Newark-upon-Trent in the county of Nottingham, to join the road from Nottingham to Grantham in the county of Lincoln, near the Guide Post on the Foss Road near Bingham, in the said county of Nottingham.
1 & 2 G. 4. c. lvi. -	11. An Act to continue the term and alter and enlarge the powers of two Acts, for repairing the roads from Sheet Bridge to Portsmouth, and from Petersfield to the Alton Turnpike Road near Ropley, in the county of Southampton.
1 & 2 G. 4. c. lxxxi. -	12. An Act for repairing the road from Birmingham, through Stratford-upon-Avon, to Stratford Bridge in the county of Warwick.
1 & 2 G. 4. c. lxxxiv.	13. An Act for repairing the road from Alenmouth, through Alnwick and Rothbury, to Hexham, and a branch from the said road between Alnwick and Rothbury to Jockey's Dike Bridge, all in the county of Northumberland; <i>so far as the same relates to the Eastern District.</i>
1 & 2 G. 4. c. lxxxvi.	14. An Act to continue and amend two Acts for repairing the road from the turnpike road near the town of Weston-on-the-Green in the county of Oxford to the turnpike road on Kidlington Green in the said county.
3 G. 4. c. ii. - -	15. An Act for repairing and maintaining certain roads leading to and from Chepstow and other places in the counties of Monmouth and Gloucester, called the District of Chepstow and the New Passage District.
3 G. 4. c. lxix. - -	16. An Act for repairing and amending several roads leading to and from the borough of Evesham in the county of Worcester, and several other roads in the counties of Worcester and Gloucester; <i>so far as the same relates to the Second District, and to the Pershore Division of the First District.</i>

Date of Act.	Title of Act.
3 G. 4. c. xc. - -	17. An Act for more effectually repairing the road from the Guide Post near the end of Drayton Lane, near Banbury in the county of Oxford, to the house called the Sun Rising, at the top of Edge Hill in the county of Warwick.
3 G. 4. c. c. - -	18. An Act for amending, widening, and keeping in repair the roads leading from the town of Northampton to Chain Bridge near the town of Market Harborough, and from the Direction Post in Kings-thorpe to Welford Bridge, all in the county of Northampton.
4 G. 4. c. xii. - -	19. An Act for more effectually making, repairing, and improving the roads from Union Point near Uckfield to the sea houses in Eastbourne, and from Horsebridge to Cross in Hand, all in the county of Sussex.
4 G. 4. c. xv. - -	20. An Act for repairing and improving the roads from the town of Stockbridge to the city of Winchester, and from the said city of Winchester to the top of Stephen's Castle Down near the town of Bishop's Waltham in the county of Southampton, and from the said city of Winchester through Otterborne to Bar Gate in the town and county of the town of Southampton, and certain roads adjoining thereto; <i>so far as the same relates to the South District of the Southampton Road.</i>
4 G. 4. c. lvi. - -	21. An Act for continuing the term and powers of an Act of His late Majesty's Reign, for repairing the road from the north end of Bridgford Lane in the county of Nottingham to the Bowling Green at Kettering in the county of Northampton.
4 G. 4. c. lxxxi. -	22. An Act for amending and keeping in repair the roads from Dover to Barham Downs, and from Dover to the town of Folkestone, and from thence through the parish of Folkestone to Sandgate in the county of Kent; <i>so far as the same relates to the Dover to Barham Downs Road.</i>
5 G. 4. c. ix. - -	23. An Act for amending and maintaining the roads from the Hand and Post at the top of Burford Lane in the county of Gloucester to Stow-on-the-Wold, and from thence to Paddle Brook; and from the Cross Hands on Salford Hill in the county of Oxford to the Hand and Post in the parish of Withington in the county of Gloucester.
5 G. 4. c. xliii. - -	24. An Act for repairing the road from Dunchurch to Stonebridge in the county of Warwick.
5 G. 4. c. lxxviii. -	25. An Act for more effectually repairing the roads leading from Saint Dunstan's Cross to North Lane near to the city of Canterbury, and to the sea side at Whitstable in the county of Kent, and for widening and improving the road from North Lane aforesaid over West Gate Bridge to the West Gate of the said city, and for making a foot bridge on each side of the said bridge and gate into the said city.
5 G. 4. c. ci. - -	26. An Act for more effectually repairing the road from Ashby-de-la-Zouch in the county of Leicester, through Burton-upon-Trent in the county of Stafford, to Tutbury in the said county of Stafford.
6 G. 4. c. xxviii. -	27. An Act for more effectually amending, widening, improving, and keeping in repair the road from Wooler to the Great North Turnpike Road at or near to Adderstone Lane in the county of Northumberland.
6 G. 4. c. liii. - -	28. An Act for repairing the road branching out of the Great North Road by the Guide Post at the south end of Spittlegate in the parish of Grantham in the county of Lincoln, and leading from thence to the turnpike road at or near Bridge End in the same county.
6 G. 4. c. lxxxi. -	29. An Act for more effectually repairing, widening, altering, and improving the road from Melton Mowbray in the county of Leicester to the guide post in Saint Margaret's Field, Leicester, and the road branching from the said road at or near a certain place in the lordship of Barkby in the said county called the Round Hill to the town of Barkby.

Date of Act.	Title of Act.
7 G. 4. c. xvi. - -	30. An Act for more effectually repairing and improving the roads from Manchester in the county palatine of Lancaster to Salter's Brook in the county palatine of Chester, and for making and maintaining several extensions or diversions of road, and a new branch of road to communicate therewith.
7 G. 4. c. lxxv. - -	31. An Act for more effectually amending, widening, altering, improving, and maintaining the road from the town of Alnwick in the county of Northumberland by Eglington and Chatton to the Great North Turnpike Road near to Haggerston Toll Bar in the county of Durham.
7 G. 4. c. lxxviii. -	32. An Act for making, maintaining, and repairing certain roads leading into and from the town of Tewkesbury in the county of Gloucester towards the cities of Gloucester and Worcester, and the towns of Cheltenham, Stow-on-the-Wold, Evesham, and Pershore, and certain other roads therein mentioned, in the counties of Gloucester and Worcester.
7 & 8 G. 4. c. xvi. -	33. An Act for more effectually repairing the roads from the city of Gloucester to the top of Birdlip Hill, and from the foot of the said hill to the top of Crickley Hill in the county of Gloucester.
7 & 8 G. 4. c. xxvi. -	34. An Act for repairing the roads from Warwick to Paddle Brook in the parish of Stretton-on-the-Fosse, and from Warwick to Stratford-upon-Avon, in the counties of Warwick and Worcester.
7 & 8 G. 4. c. li. -	35. An Act for amending, improving, and maintaining in repair the road between the point at which the great roads from the city of Carlisle to the cities of Edinburgh and Glasgow respectively separate, and Westlinton Bridge in the county of Cumberland.
7 & 8 G. 4. c. xcix. -	36. An Act for repairing the road from the city of York to Kerby Bridge, and from Grimston to the upper end of Stone Dale in the county of York.
9 G. 4. c. xxxiv. -	37. An Act for repairing the road from Spernal Ash in the county of Warwick through Studley to Birmingham.
9 G. 4. c. xxxvi. -	38. An Act for more effectually repairing the roads from the town of Cambridge to the Wadesmill Turnpike Road in the parishes of Great Chishill and Little Chishill in the county of Essex, and from the said town of Cambridge to Royston in the county of Cambridge.
9 G. 4. c. xlv. -	39. An Act for repairing the road leading from Ipswich to South Town, and from the said Road, at or near Beech Lane in the parish of Darsham, to Bungay in the county of Suffolk.
10 G. 4. c. lxxviii. -	40. An Act for more effectually repairing the road from James Deeping Stone Bridge to Peter's Gate in Stamford in the county of Lincoln, and from thence to the south end of the town of Morcott in the county of Rutland.
10 G. 4. c. lxxix. -	41. An Act for improving and maintaining certain roads in the counties of Worcester, Warwick, Stafford, and Salop, called "The Dudley, Birmingham, Wolverhampton, and Streetway District;" <i>so far as the same relates to the Streetway and Wordsley Green and Wolverhampton and Cannock Roads.</i>
11 G. 4. c. ix. -	42. An Act for more effectually repairing the roads to and from Longtown, and certain other roads communicating therewith, in the county of Cumberland.
11 G. 4. c. xxxiv. -	43. An Act for more effectually repairing and otherwise improving several roads from Radstock to Buckland Dinham, Kilmersdon, Babington, and Hallastrow, and from Norton Down to Norton St. Philip, in the county of Somerset.
1 W. 4. c. vii. -	44. An Act for more effectually maintaining the road from Crossford Bridge to the town of Manchester in the county palatine of Lancaster, and for making a branch road to communicate therewith.

Date of Act.	Title of Act.
1 W. 4. c. x.	45. An Act for repairing the road from Burton Bridge in the county of Stafford to Market Bosworth in the county of Leicester.
1 W. 4. c. xi.	46. An Act for repairing the road from Birmingham to Bromsgrove.
1 & 2 W. 4. c. xxi.	47. An Act for more effectually repairing the roads from the borough of King's Lynn, and other roads therein mentioned, and for making a new line of road at Castle Rising, all in the county of Norfolk.
2 W. 4. c. xvi.	48. An Act for more effectually improving the road from Burford to Banbury in the county of Oxford, and from Burford to the road leading to Stow in the county of Gloucester, and from Swerford Gate in the county of Oxford to the road in Aynho in the county of Northampton; and for making a new branch of road to communicate with the same.
2 W. 4. c. xxii.	49. An Act for more effectually repairing the road leading from Boroughbridge in the county of York to the city of Durham, and for making and maintaining certain deviations therein; <i>so far as the same relates to that part of the road situate in the county of York.</i>
2 W. 4. c. xxxiv.	50. An Act for more effectually repairing the road from the Sessions House in the town of Buckingham to Hanwell in the county of Oxford; <i>so far as the same relates to the Lower Division.</i>
2 W. 4. c. li.	51. An Act for maintaining several roads leading to and from the town of Tamworth in the counties of Stafford and Warwick.
2 W. 4. c. lv.	52. An Act for more effectually repairing and improving the road from Newcastle-under-Lyme in the county of Stafford to Drayton in Hales, otherwise Market Drayton, in the county of Salop, and for making new branches and deviations of roads to communicate therewith.
3 W. 4. c. xvi.	53. An Act for repairing the road from Wellsbourn Mountfort to Stratford-upon-Avon in the county of Warwick.
3 W. 4. c. xli.	54. An Act for repairing the road from Upton in Ratley to Great Kington and Wellesbourne Hastings in the county of Warwick.
3 W. 4. c. xlii.	55. An Act for more effectually repairing the several roads leading from the towns of Hertford and Ware and other places in the county of Hertford.
3 W. 4. c. lv.	56. An Act for more effectually repairing the roads leading from the city of Gloucester towards the city of Hereford, and also towards Newent and Newnham in the county of Gloucester, Ledbury in the county of Hereford, and Upton-upon-Severn in the county of Worcester.
3 W. 4. c. lvii.	57. An Act to amend an Act passed in the seventh year of the reign of His late Majesty King George the Fourth, for repairing the roads from Manchester to Salter's Brook, and for making several roads to communicate therewith; and also for making a certain new extension or diversion of the said roads instead of a certain extension or diversion by the said Act authorized to be made.
3 & 4 W. 4. c. lxxxiii.	58. An Act for repairing, maintaining, and improving the road from Tadcaster Bridge within the county of the city of York to Hob Moor Lane End.
5 W. 4. c. xl.	59. An Act for more effectually repairing the road from Saint Benedict's Gate in the county of the city of Norwich to Swaffham in the county of Norfolk, and from Halfpenny Bridge in Honingham to the Bounds of Yaxham, and also a lane called Hangman's Lane, near the gates of the said city.
5 & 6 W. 4. c. lxiv.	60. An Act for repairing the roads from Sevenoaks Common to Woodsgate, Tunbridge Wells, and Kipping's Cross, and from Tunbridge Wells to Woodsgate, in the county of Kent.

Date of Act.	Title of Act.
7 W. 4. c. xvii.	61. An Act for amending an Act of His present Majesty, for repairing the roads from Sevenoaks Common to Woodsgate, Tunbridge Wells, and Kipping's Cross, and from Tunbridge Wells to Woodsgate, in the county of Kent.
2 Vict. c. xxxii.	62. An Act for repairing and maintaining the road from Leeds, through Harewood, to the south-west corner of the inclosures of Harrogate in the West Riding of the county of York.
11 & 12 Vict. c. cxlvi.	63. An Act for altering and amending an Act passed for maintaining the road from Crossford Bridge to Manchester, and a branch connected therewith.

## NINTH SCHEDULE.

*(Turnpike Trusts nearly out of Debt and continued by the Annual Turnpike Acts Continuance Act.)*

Acts which are to continue until the 1st of November 1871, and in the case of each trust for such further time, if any, as may be required to complete the term of one year, not later than 1st June 1872, from the time for which the tolls, or any of them, shall have been let at the last meeting of such trust held for that purpose, unless Parliament in the meantime otherwise provides.

County.	Name of Trust.	Tolls in 1869.	Debt in 1869.	No. of Act.
		£	£ pr. cent.	
Berks -	Twyford and Theale -	959	500 4	38, 63
Bucks -	Buckingham and Hanwell, Upper Division -	317	120 4	54
	Princes Risborough and Thame -	520	100 4	29
Chester -	Acton Bridge and Hartford Green -	720	478 3	23, 42
	Macclesfield District of the Sandon -	804	245 4	25, 33
	Span Smithy and Linley Lane -	402	400 3	26
Cornwall -	Callington -	1,010	900 4½ & 5	41
	Truro and Redruth -	3,712	2,400 4	67, 68
Derby -	Sheffield and Gander Lane -	1,827	858 4	18
Durham -	Boroughbridge and Durham (part) -	836	430 5	52
	Darlington and Cockerton Bridge (united) -	515	250 5	58
	Durham and Tyne Bridge -	2,600	1,700 5	27
Gloucester -	Berkeley, Dursley, Wotton-under-Edge, Frocester, and Cainscross.	3,387	1,400 4	19
	Sodbury Division, and Cirencester and Bath (united).	2,588	1,800 4	1, 21
Hants -	Stockbridge and Winchester -	170	75 4	22
	Winchester and Alton, Lower District -	526	300 4½	9
Hereford -	Ledbury -	1,710	1,640 4	55
Hertford -	Sparrows Herne -	1,800	700 4½	66
	Watton -	475	500 4	14
Huntingdon -	Godmanchester and Cambridge -	772	260 4	3
	Somersham -	945	820 4	15
Kent -	Dover to Sandwich, through Deal -	1,153	950 5	64
	Faversham, Hythe, and Canterbury -	1,512	550 4	48



County.	Name of Trust.	Tolls in 1869.	Debt in 1869.		No. of Act.
		£	£	pr. cent.	
Lancaster	Liverpool and Preston - - -	3,635	1,950	4	49
	Manchester to Rochdale, &c., Manchester District.	1,120	700	4½	5
	Rochdale and Manchester - - -	3,500	2,000	4 & 4½	65
Leicester	Leicester and Lutterworth - - -	697	198	5	30
Lincoln	Lincoln, Brigg, Barton, Caistor, and Melton	1,711	886	4	40
Norfolk	Lynn, South Gate - - -	1,063	1,300	4	51
	Norwich and Scole - - -	173	300	4	36
	Norwich and Yarmouth - - -	647	500	4	50
Northampton	Wellingborough and Northampton - - -	448	430	5	10
Northumberland	Cow Cawsey and Buckton Burn - - -	1,752	900	5	60
Nottingham	Kirkby and Pinxton - - -	141	200	3	45
Salop	Ellesmere District, Wem Division - - -	152	60	5	62
Somerset	Chard - - -	743	500	4 & 5	44, 46
Stafford	Sandon, Hugbridge, Hilderstone, and Draycott in the Moors.	640	470	5	25
	Oswestry - - -	2,302	2,779	4	13
Suffolk	South Town - - -	358	490	4½	57
Sussex	Rye - - -	760	400	4	28
	Tunbridge Wells and Uckfield - - -	308	200	5	43
Warwick	Alcester, United - - -	997	800	4	7, 17, 35
	Birmingham to Stonebridge - - -	637	336	5	53
	Birmingham, Warwick, and Warminster - - -	1,580	503	4	47
	Birmingham and Watford Gap - - -	1,457	500	4	34
	Coventry and Wolvey - - -	225	41	4	2
	Evesham and Alcester, Alcester District - - -	244	200	4	11
	Stonebridge and Kenilworth - - -	118	955	4 & 5	6
	Ambleside - - -	1,086	880	4	24
	Calne - - -	601	400	5	4
	Marlborough and Froxfield - - -	127	100	4	39
Westmoreland	Westbury - - -	921	950	3	32
	Evesham and Alcester, Evesham District - - -	171	250	5	11
Wilts	Inning's Lane - - -	101	50	5	} 20
	Kidderminster - - -	2,169	800	5	
Worcester	Upton-on-Severn - - -	625	350	4	31
	Bradford and Wakefield - - -	2,710	1,500	4	12
York	Harrogate and Hewick, and Ripon and Pateley Bridge (united). - - -	1,452	925	5	8, 16
	Hull and Beverley - - -	1,218	575	2½	56
Denbigh	Rochdale to Halifax and Elland - - -	4,396	1,830	5	60
	Sedbergh - - -	600	806	4	37
Denbigh	Llanrwst - - -	103	100	5	62
	Wrexham, Ruabon, and Llangollen - - -	886	2,024	4	13

Date of Act.	Title of Act.
52 G. 3. c. xxvii.	1. An Act to continue the term, and alter and enlarge the powers of an Act passed in the twenty-third year of His present Majesty, for completing the road from Cirencester, in the county of Gloucester, through Tetbury, to Woelfield Corner, and a road from thence to or near Lambridge, near the city of Bath, and for other purposes relating thereto; and also to repair a certain road from Duffton to Underbridge, in the parish of Shipton Moigne, in the said county.

Date of Act.	Title of Act.
53 G. 3. c. vi. -	2. An Act for repairing the road from the city of Coventry to the Rugby Turnpike Road in the parish of Wolvey in the county of Warwick.
53 G. 3. c. xli. -	3. An Act for more effectually repairing the road from the Horseshoe Corner in Godmanchester in the county of Huntingdon to the South-east End of Castle Street in the town of Cambridge in the county of Cambridge.
53 G. 3. c. cxxviii. -	4. An Act for enlarging the term and powers of two Acts of His present Majesty, for repairing the road from Cherill, through Calne, to Studley Bridge, and other Roads therein mentioned, in the county of Wilts.
54 G. 3. c. i. -	5. An Act to continue and amend two Acts of the thirty-eighth and forty-third years of His present Majesty, for more effectually repairing that part of the roads from Manchester to Rochdale, Bury, and Radcliffe Bridge, all in the county palatine of Lancaster, which is called The Manchester District, and for making and maintaining a new branch of road to communicate therewith.
54 G. 3. c. xv. -	6. An Act for enlarging the term and powers of two Acts of His present Majesty, for repairing the road from the Warwick Road near Solihull to the guide post in Kenilworth, and from Stonebridge, to meet the aforesaid road at Balsall Common, in the county of Warwick, so far as respects the said road from Stonebridge to Balsall Common, and from thence to the said town of Kenilworth.
54 G. 3. c. lxxxiv. -	7. An Act for repairing the road from Aulcester to Wootton Wawen, in the county of Warwick.
54 G. 3. c. cci. -	8. An Act for repairing the roads from Harrowgate through Ripley and Ripon to Hutton Moor, and from Kirkby Hill Moor to Ripon, in the county of York.
57 G. 3. c. xxvi. -	9. An Act for amending the roads leading from Basingstone near Bagshot, through Farnham in the county of Surrey, and Alton and New Alresford, to Winchester in the county of Southampton; <i>so far as the same relates to the Lower District.</i>
59 G. 3. c. xix. -	10. An Act for enlarging the term and powers of an Act of His present Majesty, for repairing the road leading from a place called Morton's Corner, in the town of Wellingborough, in the county of Northampton, to the east end of Abington Street in the town of Northampton.
59 G. 3. c. xlvi. -	11. An Act for enlarging the term and powers of two Acts of His present Majesty, for repairing the road from Evesham Bridge, in the county of Worcester, to Alcester, in the county of Warwick.
59 G. 3. c. lxxx. -	12. An Act for more effectually repairing and improving the road from Bradford to Wakefield, in the West Riding, in the county of York.
1 G. 4. c. xlv. -	13. An Act for more effectually repairing and improving the road from the town of Pool, in the county of Montgomery, through Oswestry, in the county of Salop, to Wrexham, in the county of Denbigh, and several other roads therein mentioned in the said counties, and in the county of Merioneth; and for making several new branches of roads to communicate with the said roads in the counties of Salop, Montgomery, and Denbigh.
1 G. 4. c. lxx. -	14. An Act for continuing and amending three Acts of their Majesties King George the Second and King George the Third, for repairing the roads from Hertford to Broadwater, and from Ware to Walkern, all in the county of Hertford.
1 G. 4. c. lxxix. -	15. An Act for repairing the road from Chatteris Ferry, through Somersham, to the Crown Inn in Saint Ives, and also the road branching out of the said road near Stock's Bridge through Needingworth to Hermitage Bridge, in the parish of Earith, in the county of Huntingdon.

Date of Act.	Title of Act.
1 & 2 G. 4. c. xi. -	16. An Act for enlarging the term and powers of several Acts of King George the Second, and of His late Majesty King George the Third, for repairing the high road from the borough of Ripon, by Ingram Bank, to the town of Pateley Bridge, in the county of York.
1 & 2 G. 4. c. xiii. -	17. An Act for repairing the roads from Stratford-upon-Avon in the county of Warwick, through Alcester and Feckenham, to Bradley Brook, in the county of Worcester, and other roads therein mentioned in the same counties.
1 & 2 G. 4. c. liv. -	18. An Act for continuing and amending two Acts of His late Majesty, for repairing the roads from Gander Lane, in the county of Derby, to Sheffield, in the county of York, and from Mosbrough Green to Clown, both in the said county of Derby; and also for widening and altering certain parts of the said roads, and making and maintaining certain branches of road communicating therewith.
1 & 2 G. 4. c. lxxxi.	19. An Act for repairing part of the great road from Gloucester to Bristol, and certain roads through and near the towns of Berkeley, Dursley, Wotton-under-edge, and Stroud, and other roads therein mentioned, in the counties of Gloucester and Wilts.
1 & 2 G. 4. c. xci. -	20. An Act for more effectually repairing several roads leading from Kidderminster in the county of Worcester, and several other roads connected therewith, in the counties of Worcester, Stafford, and Salop.
3 G. 4. c. xciii. -	21. An Act for repairing, altering, and improving the road from the Stone Pillar or Cross Hand in the parish of Chippenham in the county of Wilts, to or near to Knox Bridge in the parish of Westerleigh in the county of Gloucester, and several other roads therein mentioned, in the said counties of Gloucester and Wilts.
4 G. 4. c. xv. -	22. An Act for repairing and improving the roads from the town of Stockbridge to the city of Winchester, and from the said city of Winchester to the top of Stephen's Castle Down, near the town of Bishop's Waltham in the county of Southampton, and from the said city of Winchester through Otterborne to Bar Gate in the town and county of the town of Southampton, and certain roads adjoining thereto; <i>so far as the same relates to the Stockbridge and Winchester Road.</i>
4 G. 4. c. lxxxii. -	23. An Act for improving and keeping in repair the road from Tarporley in the county palatine of Chester to the south-east end of Acton Forge near Weverham in the same county.
5 G. 4. c. xiv. -	24. An Act for more effectually repairing and improving so much of the road from Keswick in the county of Cumberland, by Dunmail Raise and Ambleside, to Kirkby-in-Kendal in the county of Westmorland, as is situate in the said county of Westmorland; and also the road from Plunbgarth's Cross, near Kirkby-in-Kendal aforesaid, to the Lake called Windermere, in the county of Westmorland.
5 G. 4. c. xxiv. -	25. An Act for amending, repairing, and maintaining the road from Sandon in the county of Stafford to Bullock Smithy in the county of Chester, and from Hilderstone to Draycott-in-the-Moors, and from Wetley Rocks to Tean in the said county of Stafford.
5 G. 4. c. xxv. -	26. An Act for improving and keeping in repair the road from Span Smithy in the county of Chester to Talk in the county of Stafford.
5 G. 4. c. cii. -	27. An Act for repairing the road from the city of Durham to Tyne Bridge, and for making and maintaining a collateral branch, and certain other branches, to communicate respectively with certain parts of the said road in the parishes of Chester-le-Street and Gateshead, all in the county of Durham.

Date of Act.	Title of Act.
6 G. 4. c. xliii. -	28. An Act for more effectually repairing and widening the road from Flimwell Vent in the county of Sussex, through Highgate in the county of Kent, and the parishes of Sandhurst, Newenden, and Northiam, to Taylor's Corner in the parish of Rye in the county of Sussex; and from Highgate aforesaid to Cooper's Corner in the county of Sussex; and also a piece of road communicating with the said road, called Whitebread Lane in the said county.
6 G. 4. c. xlv. -	29. An Act for more effectually repairing and improving certain roads passing through Princes Risborough in the county of Buckingham, and communicating with Aylesbury and Great Marlow in the said county, and Thame in the county of Oxford.
6 G. 4. c. lxxx. -	30. An Act for more effectually repairing, widening, altering, and improving the road from the borough of Leicester to the town of Lutterworth in the county of Leicester.
6 G. 4. c. cliii. -	31. An Act for repairing, improving, and keeping in repair several roads leading to and from the town of Upton-upon-Severn in the county of Worcester.
7 G. 4. c. xv. -	32. An Act for maintaining and improving the road leading from Pengate in the parish of Westbury to a place formerly called Price's Warren Gate, at Tinhead in the parish of Edington in the county of Wilts, and other roads near or adjoining the said roads in the counties of Wilts and Somerset.
7 G. 4. c. xx. -	33. An Act for amending an Act of His present Majesty, for repairing the road from Sandon in the county of Stafford to Bullock Smithy in the county of Chester, and from Hilderstone to Draycott-in-the-Moors, and from Wetley Rocks to Tean, in the county of Stafford; so far as relates to the Macclesfield District of the road, and for making a diversion of road in the said district.
7 G. 4. c. xxii. -	34. An Act for repairing the road from Birmingham to Watford Gap in the parish of Sutton Coldfield in the county of Warwick, and other roads communicating therewith.
7 G. 4. c. xxiii. -	35. An Act for making and maintaining a turnpike road from Arrow in the county of Warwick to Pot Hooks End in the county of Worcester, and from Dunnington in the said county of Warwick to Crabs Cross in the said county of Worcester.
7 G. 4. c. xxvii. -	36. An Act for more effectually repairing, widening, and improving the road from the city of Norwich to Scole Bridge in the county of Norfolk.
7 G. 4. c. lxxii. -	37. An Act for more effectually repairing the roads from Kirkby Steven High-lane-head, through Sedbergh, to Greeta Bridge, and other roads communicating therewith, in the several counties of Westmoreland, Lancaster, and York; and for diverting, extending, and altering some of the said roads.
7 G. 4. c. lxxiii. -	38. An Act for repairing the road from the Thirty-three Mile Stone in the parish of Ruscombe in the county of Berks towards Reading to a place called the Seven Mile Stone in the parish of Beenham in the same county, and a certain other road communicating therewith.
7 & 8 G. 4. c. lii. -	39. An Act for more effectually repairing the road from Speenhamland in the county of Berks to Marlborough in the county of Wilts, so far as relates to the Marlborough district of the said road.
7 & 8 G. 4. c. lxvii. -	40. An Act for repairing the road from Barton Waterside House to Riseham Hedge Corner, and other roads in the county of Lincoln connected therewith.
7 & 8 G. 4. c. ci. -	41. An Act for repairing and improving certain roads leading to and from Callington in the county of Cornwall.

Date of Act.	Title of Act.
9 Geo. 4. c. cv.	42. An Act for more effectually amending and improving the road from Northwich to the Guide Post heretofore upon Delamere Forest (now the parish of Delamere), near Kelsall Hill, in the county palatine of Chester.
10 G. 4. c. lv.	43. An Act for more effectually repairing the road from Tunbridge Wells in the county of Kent to Uckfield in the county of Sussex.
10 G. 4. c. xciii.	44. An Act for more effectually repairing and improving several roads which lead to and through the town and borough of Chard in the county of Somerset, and for making and maintaining a new road from Chard to Drempton in the county of Dorset.
11 G. 4. c. vii.	45. An Act for repairing and improving the road from the Nottingham and Mansfield turnpike road, through Kirkby and Pinxton, to Carter Lane, and to the colliery near Pinxton Green, in the counties of Nottingham and Derby.
11 G. 4. c. lxxxvi.	46. An Act for amending an Act of the last session, intituled "An Act for more effectually repairing and improving several roads which lead to and through the town and borough of Chard in the county of Somerset, and for making and maintaining a new road from Chard to Drempton in the county of Dorset;" and for making and maintaining other roads communicating with the said roads in the counties of Somerset, Devon, and Dorset.
11 G. 4. c. xciv.	47. An Act for repairing the road from Birmingham through Warwick and Warmington, in the county of Warwick, to the utmost limits of the said county on Edgehill.
1 W. 4. c. vi.	48. An Act for more effectually repairing and otherwise improving the road from the Post Road near Faversham, by Bacon's Water, through Ashford, to Hythe, and from Bacon's Water to Castle Street in the city of Canterbury, all in the county of Kent.
1 W. 4. c. xxxiv.	49. An Act for more effectually repairing and improving the road from Liverpool to Preston in the county palatine of Lancaster.
1 W. 4. c. lxxv.	50. An Act for more effectually repairing the road from Bishopsgate Bridge in the city of Norwich to the Caister Causeway in the county of Norfolk.
1 & 2 W. 4. c. xx.	51. An Act for more effectually repairing and otherwise improving the several roads from the South Gate in the borough of King's Lynn into the parishes of East Walton, Narborough, Stoke Ferry, and Downham Market, in the county of Norfolk.
2 W. 4. c. xxii.	52. An Act for more effectually repairing the road leading from Boroughbridge in the county of York to the city of Durham, and for making and maintaining certain deviations therein; <i>so far as the same relates to that part of the road situate in the county of Durham.</i>
2 W. 4. c. xxxiii.	53. An Act for repairing the road from Birmingham (through Elmdon) to Stonebridge in the county of Warwick.
2 W. 4. c. xxxiv.	54. An Act for more effectually repairing the road from the Sessions House in the town of Buckingham to Hanwell in the county of Oxford; <i>so far as the same relates to the Upper Division.</i>
3 W. 4. c. lviii.	55. An Act for more effectually repairing the several roads leading from the borough of Ledbury in the county of Hereford, and the road from the parish of Bromesberrow to the road from Gloucester to Worcester, and for making several roads to communicate therewith.
3 W. 4. c. xciii.	56. An Act for maintaining the roads from the town of Kingston-upon-Hull to the town of Beverley in the East Riding of the county of York, and from Newland Bridge to the west end of the town of Cottingham in the same riding.

Date of Act.	Title of Act.
4 W. 4. c. xxix. -	57. An Act for more effectually amending, widening, and repairing the road from Yarmouth Bridge, through the hamlet of Southtown otherwise Little Yarmouth, to Gorleston in the county of Suffolk.
5 W. 4. c. xxv. -	58. An Act for more effectually repairing the Darlington and West Auckland and the Cockerton Bridge and Staindrop Roads in the county of Durham, and for consolidating the trusts thereof.
6 W. 4. c. viii. -	59. An Act for repairing and maintaining the road from Rochdale in the county palatine of Lancaster to Halifax and Ealand in the West Riding of the county of York.
6 W. 4. c. lxxxiii. -	60. An Act for more effectually improving and maintaining the turnpike road leading from the Cow Cawsey near the town of Newcastle-upon-Tyne to the town of Belford, and from thence to Buckton Burn in the county of Northumberland.
7 W. 4. c. xxxv. -	61. An Act for more effectually repairing, improving, and maintaining certain roads leading to and from the town of Llanrwst in the county of Denbigh.
1 Vict. c. xvii. -	62. An Act for repairing, amending, and maintaining the road from Shrewsbury, through Ellesmere in the county of Salop, to Wrexham in the county of Denbigh, and other roads branching out of the same; <i>so far as the same relates to the Wem Division of such roads.</i>
1 Vict. c. xli. -	63. An Act to alter, amend, and enlarge the powers and provisions of an Act passed in the seventh year of the reign of His late Majesty King George the Fourth, intituled "An Act for repairing the road " from the Thirty-three Mile Stone in the parish of Ruscombe in the " county of Berks, towards Reading, to a place called the Seven " Mile Stone, in the parish of Beenham in the said county, and a " certain other road communicating therewith."
2 Vict. c. xxxiii. -	64. An Act for repairing the road from Dover in the county of Kent, through Deal, to Sandwich in the said county.
6 & 7 Vict. c. xci. -	65. An Act for more effectually repairing the road from the new wall on the parade in Castleton in the parish of Rochdale, through Middleton, to the Mere Stone in Great Heaton, and to the town of Manchester, all in the county palatine of Lancaster; and for making a diversion in the line of such road.
8 Vict. c. ix. -	66. An Act for repairing the road from the south end of Sparrows Herne on Bushey Heath, through Watford, Berkhamstead Saint Peter, and Tring, in the county of Hertford, into the town of Aylesbury in the county of Buckingham.
11 & 12 Vict. c. li. -	67. An Act for repealing an Act of the ninth year of the reign of His Majesty King George the Fourth, intituled "An Act for making, " repairing, and improving certain roads leading to and from Truro " in the county of Cornwall," and for making other provisions in lieu thereof; for forming, vesting, and improving certain roads, and for continuing and extending the Truro Turnpike Trust.
12 & 13 Vict. c. xliv. -	68. An Act for consolidating the trusts of the Truro turnpike roads, and the Penryn and Redruth turnpike roads in the county of Cornwall, and for making a new turnpike road from Bosvigo Bridge to the turnpike road from Truro to Redruth, and for making the road or highway from Ferris Town to Bosvigo Bridge a turnpike road, and for maintaining all such roads; and for other purposes.

## CHAP. 74.

*The Curragh of Kildare Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Award confirmed.*
2. *Map deposited with award at office of clerk of the peace to be deemed part of the award.*
3. *Sheep only to be depastured.*
4. *Sheep to be marked.*
5. *Power to appoint additional bailiffs.*
6. *Ranger to have power of occupier in relation to trespasses.*
7. *Short title.*  
*Schedule.*

An Act to confirm the Award under  
"The Curragh of Kildare Act, 1868,"  
and for other purposes relating thereto.  
(9th August 1870.)

WHEREAS by "The Curragh of Kildare Act, 1868," it was enacted that three Commissioners should be appointed to ascertain and decide, amongst others, the following things; namely,

What (if any) rights of common of pasture, rights of way, or other rights (except the rights of the Crown and public rights of way) exist in, over, or affecting the Curragh, or any part thereof, either by grant, charter, or prescription;

To what persons, and for what terms, estates, or interests, the rights aforesaid respectively belong;

What (if any) are the lands in respect of which the rights aforesaid respectively are exercisable;

What (if any) compensation should be given to any party whose rights are or may be injuriously affected by the said Act; and

What (if any) public rights of way exist in, over, or affecting the Curragh or any part thereof:

And whereas Henry H. Joy, Esquire, one of Her Majesty's counsel, Alexander Stewart, Esquire, and Edmund A. Mansfield, Esquire, were duly appointed the Curragh Commissioners in manner provided by the said Act, and are hereafter referred to by the term "the Commissioners:"

And whereas the Commissioners, having given the necessary notices and taken the steps required by the said Act, proceeded in discharge of their duties as by the said Act directed, and in pursuance of the provisions of the said Act did hold meetings at such places and at such times as they considered most convenient for the accommodation of claimants and suitors, and did hold such a number of meetings in the neighbourhood of the Curragh as were sufficient for hearing local claimants:

And whereas, after hearing all claimants and suitors in manner by the said Act directed, the Commissioners did decide upon all claims made before them:

And whereas no appeal was made by any claimant or objector admitted to be heard before the Commissioners:

And whereas the Commissioners thereupon, in manner by the said Act prescribed, did on the thirtieth day of June one thousand eight hundred and sixty-nine duly make their award in duplicate, which award is set forth in the schedule to this Act annexed, and did, in accordance with the provisions of the said Act, on the first day of July one thousand eight hundred and sixty-nine, present one part of the said award to the chief secretary to the Lord Lieutenant of Ireland, and did deposit the other part with the clerk of the peace for the county of Kildare, and did also publish a copy of such award once in each of three successive weeks next after the making thereof in the Dublin Gazette and in the Leinster Express, a newspaper circulating in the county of Kildare:

And whereas it is provided by the said Act that "the chief secretary to the Lord Lieutenant shall as soon as conveniently may be after the publication of the said award take all necessary steps for the confirmation of the same by Act of Parliament, and that previously to such confirmation the said award shall not be of any validity whatever:"

And whereas it is expedient that the said award should be so confirmed, and further provision made in relation thereto:

May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this Parliament assembled, and by the authority of the same, as follows:

1. The award, a copy of which is set forth in the schedule to this Act annexed, is hereby confirmed, and made effectual to all intents and purposes, and shall be as binding and of the like

force and effect as if the provisions of the same had been expressly enacted in this Act.

2. The map referred to in and deposited with the copy of the said award at the office of the clerk of the peace for the county of Kildare on the thirtieth day of June one thousand eight hundred and sixty-nine, showing the rights of way existing in, over, or affecting the Curragh, shall be deemed to be and shall form part of the said award.

3. No animal other than sheep shall at any time after the passing of this Act depasture on the Curragh, or be turned out to depasture thereon.

4. No sheep shall depasture on the Curragh, or be turned out to depasture thereon, unless they be respectively marked in a distinctive manner, and according to such regulations as the ranger may from time to time direct.

5. It shall be lawful for the ranger of the Curragh, by and with the sanction of the Lords Commissioners of Her Majesty's Treasury, to appoint assistant bailiffs (not exceeding four in number) to assist the deputy ranger in the discharge of his duties, and for the protection of the said Curragh, at such salaries and remuneration as may be approved by the said Lords Commissioners of the Treasury.

6. The ranger of the Curragh shall, for the purpose of preventing the trespass of animals upon the Curragh, have and may exercise all the same rights as if he were the occupier of the same, and shall, for the purposes of section twenty of "The Summary Jurisdiction (Ireland) Act, 1851," be deemed to be the occupier of the Curragh.

7. This Act may be cited for all purposes as "The Curragh of Kildare Act, 1870."

#### SCHEDULE to which the foregoing Act refers.

"Curragh of Kildare Act, 1868."

##### AWARD OF COMMISSIONERS.

WHEREAS by an Act passed in the session of Parliament in the thirty-first and thirty-second years of Her present Majesty, intituled "An Act to make better provision for the management and use of the Curragh of Kildare," it is enacted that three Commissioners should be appointed to ascertain and decide, amongst other things, the following, namely:—

What (if any) rights of common of pasture, rights of way, or other rights (except the rights of the Crown and public rights of way) exist in, over, or affecting the Curragh, or any part thereof, either by grant, charter, or prescription:

To what persons and for what terms, estates, or interests the rights aforesaid respectively belong:

What (if any) are the lands in respect of which the rights aforesaid respectively are exercisable:

What (if any) compensation should be given to any party whose rights are or may be injuriously affected by the said Act:

We, the Commissioners duly appointed, having taken the necessary steps and given the notices required by the said Act, and having heard and examined the evidence, oral and documentary, produced before us, do make our award, as follows:—

We have in the first schedule hereunto annexed, to be taken and considered as part of this our award, stated the names of the several persons on whose behalf claims have been made before us under the said Act, the townlands (county of Kildare) in which the lands are respectively situate, and in respect of which the claims have been made, the substance of each claim lodged and brought before us, the compensation claimed (if any), and the terms, estates, or interests, and number of acres, Irish plantation measure, in respect of which such claims are made, with our allowance or disallowance, wholly or in part, of such claims respectively.

We find that no rights of persons legally claiming under the said Act are substantially altered, varied, or injuriously affected by the said Act, and, as a matter of fact on the evidence adduced before us, that no right to compensation has been established by any of the claimants, either in respect of the site of the camp, or the rifle-ground, or otherwise.

We further find that, from want of proper authority and neglect on the part of those having the care and management of the Curragh, numerous parties have, from time to time, without having any right so to do, pastured sheep on the Curragh, to the prejudice, loss, and injury of those parties who have acquired legal rights to pasture thereon. We find, from the evidence adduced before us, to such an extent has this taken place, that the pasturage of the Curragh has been rendered to a great extent useless, and



that many of the persons whose claims to pasture are by this our award allowed have for many years past been deprived of the use of the pasturage on the Curragh, and it does not appear that the persons so deprived ever took any effective steps to remove those who so prejudicially interfered with the pasturage.

We further find that large quantities of sheep manure have been from time to time taken off the Curragh by divers parties without any right or privilege so to do; and that the removal of such manure has practically deteriorated the pasturage of the Curragh to a considerable extent.

We further find, on the evidence adduced before us, that the right of use of pasturage for any animals other than sheep is unsustainable, and that the pasturage on the Curragh is adapted for sheep only (such pasturage being supplementary to the lands in respect of which same is by this our award allowed); and, for the benefit of those entitled to the enjoyment of pasture on the Curragh, we award accordingly that such pasturage shall be confined to sheep.

We further award that all persons whose claims of right to the use of a well or pond on the Curragh are by this our award recognised and allowed shall respectively enjoy such right and access to such well and pond in the way and by the means particularly shown in and by a map or plan lodged by us with the clerk of the peace for the county of Kildare.

In pursuance of the provisions of the said Act, and to prevent in future the cutting up and injuring of the pasturage of the Curragh, we prescribe, award, and determine that the specific ways in respect of rights of way (other than public rights of way) in, over, or affecting the Curragh, or any part thereof, shall be in the direction and lines particularly shown in and by the said map or plan so lodged by us in the office

of the clerk of the peace for the said county of Kildare; such specific rights of way being those only which we have determined, and do hereby determine, as necessary and proper for convenience of the owners and occupiers of lands in respect of which such rights are exerciseable; and we accordingly award that all rights of way (other than public rights of way) in, over, or affecting the Curragh shall, after this our award, be exerciseable only in, along, or across the specific ways laid out on the said map; and that all ways (other than public ways, and hereinbefore referred to as such) in, over, or affecting the Curragh, except the specific ways aforesaid, shall be stopped up.

We further award that the tenants and occupiers of the lands in respect of which claims have been made and allowed by this our award are to be considered only as entitled to the common of pasture, rights of way, or other rights by this our award allowed, in right of their several landlords, and so long only as their interests as such tenants and occupiers respectively continue, and that such rights are not transferable apart from the occupation of the lands.

And we do by this our award ascertain and decide that the public rights of way existing in, over, or affecting the Curragh are those mentioned in the second schedule hereunto annexed, and to be taken as part of our award, and particularly shown in the said map.

We further award and determine that there are no other rights in or over the Curragh save those by this our award allowed.

In witness whereof we have this 30th day of June 1869 affixed our signatures hereto.

HENRY H. JOY, ALEXANDER STEWART, EDMUND A. MANSFIELD,	}	Curragh Commissioners.
---	---	---------------------------

## FIRST SCHEDULE.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
385	James Twigg	Athgarvan and Black-rath.	Common of pasture	Fee-simple under a Patent granting common of pasture on the Curragh— A. R. P. Blackrath - 247 0 16 Athgarvan - 153 3 4 Total - 400 3 20	Allowed (in respect of 372a.) pasturage of sheep for tenants in occupation of claimant's lands, with reversion of said pasturage to claimant; not exceeding 37½ sheep.
241	Laurence Keegan, sen.	Do.	Common of pasture.	Yearly tenant for 2a. 2r.	2
329	Allen M'Donogh	Do.	Common of pasture	Leaseholder, 36a.	Allowed (in respect of 305a.) pasturage of sheep for tenants in occupation of claimants' lands, with reversion of said pasturage to claimants during their tenure; not exceeding 305 sheep. 20a. Right of way disallowed. Use of well allowed by access, as shown by the map before referred to. Disallowed.
353	Joseph R. and Thomas B. Reeves.	Do.	Common of pasture	Leaseholder, 805a.	
12	William Belford	Do.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way. Use of well on the Curragh.	Yearly tenant, 20a.	
29	Andrew Brady	Do.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way. Use of well and pond on the Curragh.	Yearly tenant, a house	20
172	Michael Gannon	Do.	Common of pasture	Tenant at will, 2½a.	Allowed pasturage of sheep in respect of 2a. Allowed pasturage of sheep in respect of 1a. Allowed pasturage of sheep in respect of 53a. Disallowed. Disallowed. Withdrawn.
234	Christopher Kenna	Do.	Common of pasture	Tenant at will, 1½a.	
330	Allen M'Donough	Do.	Common of pasture	Under a lease for lives renewable for ever, 53a.	
164	William Field	Do.	Common of pasture	House and garden -	Disallowed. Disallowed. Withdrawn.
284	Henry Mullaly	Do.	Common of pasture	House and garden -	
38	Michael Byrne	Do.	Common of pasture. Passage to well. Right of water.	Yearly tenant, 1a. 0r. 30p.	
45	John Buckley	Do.	Common of pasture. Right of way.	Yearly tenant, 8a.	Allowed pasturage of sheep in respect of 8a.

These holdings form part of the 372a. in respect of which James Twigg's claim has been allowed.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
69	Catherine Cooney -	Athgarvan and Black-rath—cont.	Common of pasture	Tenant at will, 1a. 1r.	1
116	Mary D'Arcy -	Do.	Common of pasture. Right of way.	Tenant at will, 8a. -	8
136	Christopher Egan -	Do.	Common of pasture	Yearly tenant, 7a. -	7
149	Maria Farrell -	Do.	Common of pasture. Right of way.	Tenant at will, 20a.	20
160	Patrick Fleming -	Do.	Common of pasture. Right of way to public roads.	Yearly tenant, 6a. -	6
162	Francis Fleming -	Do.	Common of pasture. Right of way through the Curragh.	Tenant at will, 16a.	16
167	Michael Houlaban -	Do.	Place on Curragh for shoeing and hooping wheels. Way from claimant's house to stables to shoe horses.	Freehold, 2r. -	-
170	John Geraty -	Do.	Common of pasture. Compensation for land taken by Camp. Right of way across Curragh to public roads. Way to and use of well and pond on Curragh.	Yearly tenant, 6a. -	6
173	Edward Galaher -	Do.	Same as above	Yearly tenant, house and garden.	-
191	Michael Hyland -	Do.	Common of pasture. Right of way through Curragh.	Yearly tenant, 8a. 2r. -	-
246	Thomas Keegan -	Do.	Common of pasture. Compensation for loss of depositing manure on Curragh.	Freehold cottage and garden.	-
261	John Hill Linde -	Do.	Common of pasture	Lease for claimant's life, 157a.	8

These holdings form part of the 572a. in respect of which James Twigg's claim has been allowed.

Allowed pasturage of sheep in respect of 1a.

Allowed pasturage of sheep in respect of 8a.

Allowed pasturage of sheep in respect of 7a.

Allowed pasturage of sheep in respect of 20a.

Allowed pasturage of sheep in respect of 6a. Way to public roads allowed, as shown by the map before referred to.

Allowed pasturage of sheep in respect of 16a. Right of way disallowed.

Disallowed.

Allowed pasturage of sheep in respect of 6a. Compensation disallowed. Way to public roads, use of well and pond allowed, as shown by the map before referred to.

Common of pasture disallowed. Compensation disallowed. Way to public roads, use of well and pond allowed, as shown by the map before referred to.

Allowed pasturage of sheep in respect of 8a. Right of way disallowed.

Disallowed.

Allowed (in respect of 157a.) pasturage of sheep for tenants in occupation of claimant's lands, with reversion of said pasturage to claimant during his tenure; not exceeding 157 sheep. Compensation disallowed.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
262	Henry Eyre Linde	Athgarvan and Black-rath—cont.	Common of pasture	Assignee of lease for one life, aged 70 years, 46a.	46
275	Patrick Mooney	Do.	Common of pasture	Yearly tenant, 7a. -	7
298	William Moran	Do.	Common of pasture	Yearly tenant, 1a. 2r.	1
299	Paul Moran	Do.	Common of pasture	Yearly tenant, 2a. -	2
351	John Power	Do.	Common of pasture. Right of way through Curragh.	Yearly tenant, 7a. -	7
368	Thomas Whyte	Do.	Common of pasture	Yearly tenant, 90a.	30
401	Martin Whelan	Do.	Common of pasture	Yearly tenant, 12a. 3r. 12p.	12
328	Allen McDonogh	Do.	Common of pasture	Fee-simple, 1r. -	Claim withdrawn.
368	Patrick Salmon	Do.	Common of pasture. Right of way to a farm at Old Kilcullen.	A freehold house	Disallowed.
239	Laurence Keegan, jun.	Do.	Common of pasture	In fee, house, 1r. -	Disallowed.
213	Charles R. Joynt	Ballysax	Common of pasture -	Fee-farm, 1,111a. 0r. 33p. of which James Twigg's claim has been allowed.	Disallowed.
1	Richard Artary	Do.	Common of pasture	Yearly tenant, 48a. -	47
11	Maurice Beahan	Do.	Common of pasture	Leaseholder for 87a. -	87
27	John Brady	Do.	Common of pasture	Leaseholder for 14a. -	17
28	Laurence Brady	Do.	Common of pasture	Yearly tenant for 94a. -	21
209	Patrick Ivery	Do.	Common of pasture	Yearly tenant, 21a. 2r. 17p.	11
210	Patrick Ivery	Do.	Common of pasture	Yearly tenant, 11a. Right of way	4
211	Mary Ivery	Do.	Common of pasture	Yearly tenant, 4a. -	12
308	Thomas Moore	Do.	Common of pasture	Yearly tenant, 12a. -	25
46	Maurice Burke	Do.	Common of pasture	Leaseholder, 25a. -	Disallowed.
			Common of pasture	Yearly tenant, 2a. 2r. 35p.	

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
49	Laurence Cardiff	Ballysax— cont.	Common of pasture	Yearly tenant for part, 3a.	Disallowed.
50	Mathew Cardiff	Do.	Common of pasture. Compensation for land taken by Camp.	Leaseholder for part, 5a. } Yearly tenant for part } 20a.	Disallowed.
231	John Keane	Do.	Common of pasture	Leaseholder, 70a. 2r. 6p.	Allowed pasturage of sheep in respect of 70a.
232	John Keane	Do.	Common of pasture	Leaseholder, 14a. 3r.	Allowed pasturage of sheep in respect of 14a.
247	James Keenan	Do.	Common of pasture	Yearly tenant, 4a. 3r. 30p.	Allowed pasturage of sheep in respect of 4a.
270	Michael Lawler	Do.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way across the Curragh.	Yearly tenant, 18a.	Disallowed.
287	George S. Meares	Do.	Common of pasture. Compensation for land taken by Camp. Right of way across Curragh.	Leaseholder, 125a. 2r.	Allowed pasturage of sheep in respect of 4a., formerly occupied by James Conlan. Allowed (in respect of 12a.) pasturage of sheep for tenant (claim No. 28) in occupation of claimant's lands, with reversion to claimant during his lease; not exceeding 12 sheep. Compensation disallowed. Right of way disallowed.
294	Lewis J. Moran	Do.	Common of pasture, and compensation for land taken by Camp, 180L	Leaseholder, 72a.	Allowed pasturage of sheep in respect of 72a. Compensation disallowed.
293	John Moran	Do.	Common of pasture	Leaseholder, 71a. 3r. 16p.	Allowed pasturage of sheep in respect of 71a.
295	Cornelius Moran	Do.	Common of pasture	Yearly tenant, 7a. 3r. 2p.	Allowed pasturage of sheep in respect of 7a.
297	Patrick Moran	Do.	Common of pasture	Yearly tenant, 27a.	Allowed pasturage of sheep in respect of 27a.
5	James Beahan	Do.	Common of pasture	Leaseholder, 72a. 2r. 4p.	Allowed pasturage for sheep in respect of 72a.
79	Paul Cullen	Do.	Common of pasture	Yearly tenant, 13a.	Allowed pasturage of sheep in respect of 13a.
113	William Drake	Do.	Common of pasture.	Yearly tenant, 7a. 2r.	Disallowed.
193	Thompson Harrison	Do.	Right of way. Privilege of exercising and training racehorses on Curragh.	Leaseholder, 25a.	Disallowed.
78	John Cullen	Do.	Right of way	-	Withdrawn.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
208	Martin Ivery	Ballysax— cont.	Common of pasture. Right of way to road and well. Privilege of shoeing wheels on Curragh.	Yearly tenant, 1a. 2r.	Disallowed.
379	Mary Toole	Do.	Common of pasture	Yearly tenant, 7a.	Disallowed.
402	James Ward	Do.	Common of pasture	Yearly tenant, 1a. 3r. 27p.	Allowed pasturage of sheep in respect of 1a.
290	John F. Meekings	Do.	Common of pasture. Right of way from claimant's lands to public road.	Part held for lives renewable; part for shorter terms, 222a.	Allowed pasturage of sheep in respect of 222a. Access to public road allowed, as shown by the map before referred to.
400	Rev. Geo. B. Wheeler	Do.	Common of pasture	For life as rector and vicar of Ballysax. Glebe land, 19a.	Disallowed.
25	Mrs. Adelaide Brennan.	Do.	Common of pasture. Right of training 45 horses on the Curragh. Right of way. Compensation for pasture 200l. Compensation for training 1,500l.	Tenant for life under settlement of a lease for lives, converted under Renewable Leasehold Conversion Act, 21a.	Claim for pasturage disallowed. Right of training horses disallowed. Compensation disallowed.
77	John Cullen	Do.	Common of pasture	Leaseholder, 75a., under Robert Annealy Meekings.	Allowed pasturage of sheep in respect of 75a.
350	Joseph Parker	Do.	Common of pasture	Occupier, 2a.	Disallowed.
405	W. M. Woodroffe and J. L. Holmes.	Do.	Common of pasture. Compensation for rights injuriously affected by Act.	Fee-farm, 93a. Or. 80p.	Withdrawn.
348	Peter De Pentheney O'Kelly.	Do.	Common of pasture	In fee under Patent, 40a.	Allowed (in respect of 40a.) pasturage of sheep for tenants (claims Nos. 77, 33, and 44) in occupation of claimant's lands, with reversion of said pasturage to claimant; not exceeding 40 sheep.
77	John Cullen	Do.	Common of pasture	Leaseholder, 16a.	Allowed pasturage of sheep in respect of 13a.
33	Charles Byrne	Do.	Right of way	Leaseholder, 25a.	Withdrawn in favour of landlord's claim.
44	John Byrne	Do.	Right of way	Leaseholder, 2a.	Allowed pasturage of sheep in respect of 25a.
83	Michael Conlan	Do.	Common of pasture	Yearly tenant, 6a.	Withdrawn in favour of landlord's claim.
383	John Walsh	Do.	Common of pasture	Freehold house and yard	Allowed pasturage of sheep in respect of 2a.
76	Patrick Conroy	Do.	Common of pasture	Freehold house and garden	Disallowed.
89	Thomas Byrne	Do.	Common of pasture	Yearly tenant	Withdrawn.
20	Martin Boyle	Do.	Common of pasture. Right of exercising a horse.	Freehold cottage and yard	Disallowed.
331	John M'Gann	Do.	Common of pasture	Yearly tenant	Disallowed.
325	Laurence M'Dermott	Do.	Common of pasture	Freehold cottage and garden	Withdrawn.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	—	No. of Sheep allowed.
285	James Murray	Ballyear— cont.	Common of pasture	Freehold - - - -	Withdrawn.	
212	Anne Jackson	Do.	Common of pasture	House and garden - - -	Disallowed.	
63	Trustees and Guardians of Lord Clifden.	Brownstown	Common of pasture, 5,000 <i>l.</i> compensation for occupation of Curragh by Camp, and obstruction of right of training horses on Curragh.	Fee, 603 <i>a.</i> - - - -	Allowed (in respect of 419 <i>a.</i> pasture of sheep for tenants in occupation of claimants' land) with reversion of said pasture to claimants; not exceeding 419 sheep. Remainder of claim disallowed.	
111	Laurence Donlevy	Do.	Common of pasture	Yearly tenant, 30 <i>a.</i> - - -	Allowed pasture of sheep in respect of 30 <i>a.</i>	90
202	Denis Haslan	Do.	Common of pasture	Yearly tenant, 2 <i>a.</i> 1 <i>r.</i> 35 <i>p.</i> - -	Disallowed.	45
227	Michael Kelly	Do.	Common of pasture	Yearly tenant, 45 <i>a.</i> - - -	Allowed pasture of sheep in respect of 45 <i>a.</i>	63
248	George Knox	Do.	Common of pasture, 500 <i>l.</i> compensation for injury to said right by the "Curragh of Kildare Act, 1868." Right to exercise 15 horses on Curragh, and 2,000 <i>l.</i> compensation for injury to said right.	Yearly tenant with agreement with agent for a lease, 63 <i>a.</i> 2 <i>r.</i> 30 <i>p.</i>	Allowed pasture of sheep in respect of 63 <i>a.</i> Remainder of claim disallowed.	
118	Anne Dooney	Do.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way across Curragh to Newbridge.	Yearly tenant, 13 <i>a.</i> - - -	Allowed pasture of sheep in respect of 10 <i>a.</i> Remainder of claim disallowed.	10
123	Martin Doogan	Do.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way across Curragh to Newbridge.	Yearly tenant, 2 <i>a.</i> - - -	Disallowed.	
124	Martha Dalton	Do.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way across Curragh.	Yearly tenant, 1 <i>a.</i> - - -	Disallowed.	
129	Daniel Dooney	Do.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way across Curragh.	Yearly tenant, 2 <i>a.</i> 1 <i>r.</i> 10 <i>p.</i> - -	Disallowed.	
137	Frederick FitzGerald	Do.	Common of pasture	Freehold, house and yard - -	Disallowed.	

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
150	Nicholas Flood	Brownstown —cont.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way across the Curragh.	Yearly tenant, 1a. - -	Disallowed.
154	William Flood	Do.	Common of pasture	Yearly tenant, 17a. 1r. 35p.	Allowed pasturage of sheep in respect of 17a.
158	William Foran	Do.	Common of pasture. Right of way across Curragh.	Yearly tenant, house and garden	Disallowed.
161	John Fleming	Do.	Common of pasture. Right of way across Curragh.	Yearly tenant, house and garden	Disallowed.
178	Michael Grace	Do.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way across Curragh.	Yearly tenant, 6a. - -	Disallowed.
199	Ellen Hannon	Do.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way across Curragh.	Yearly tenant, house and garden	Disallowed.
249	Patrick Kearney	Do.	Common of pasture	Yearly tenant, 74a. - -	Allowed pasturage of sheep in respect of 74a.
339	Jane Owens (widow)	Do.	Common of pasture	Yearly tenant, 18a. - -	Disallowed.
340	Jane Farrell	Do.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way.	Yearly tenant, 5a. - -	Disallowed.
363	Thomas Shaw	Do.	Common of pasture	Yearly tenant, 25a. - -	Disallowed.
380	Lawrence Toole	Do.	Common of pasture	Yearly tenant, 10a. 2r. - -	Allowed pasturage of sheep in respect of 10a.
375	William Troy	Do.	Common of pasture. Compensation for occupation of Curragh by Camp.	Yearly tenant, 1a. - -	Disallowed.
376	William Troy	Do.	Common of pasture	Freehold, house and premises	Disallowed.
144	Hannah Farrell	Do.	Common of pasture. Right of training and exercising horses on Curragh.	Yearly tenant, 12a. 3r. 27p.	Disallowed.
13	Thomas Belford	Do.	Common of pasture	Yearly tenant, house and 1a. - -	Disallowed.
24	Jane Bowen	Do.	Common of pasture	Leaseholder, 4a. - -	Allowed pasturage of sheep in respect of 4a.
34	John Byrne	Do.	Common of pasture	Freehold, cottage - -	Disallowed.
40	Garrett Byrne	Do.	Common of pasture	Yearly tenant, 6a. - -	Allowed pasturage of sheep in respect of 6a.



No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	—	No. of Sheep allowed.
41	Thomas Byrne	Brownstown—cont.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way across Curragh. Compensation for being deprived of the sheep manure, value 50l. yearly.	Yearly tenant, house and 2r.	Disallowed.	
59	Simon Caffrey	Do.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way across Curragh.	Yearly tenant, 2a.	Allowed pasturage of sheep in respect of 2a. Remainder of claim disallowed.	2
66	Michael Connolly	Do.	Common of pasture. Compensation for occupation of Curragh by Camp; and injury sustained by the erection of sewage works. Right of way across the Curragh.	Yearly tenant, 5a.	Disallowed.	
71	John Collis	Do.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of training and exercising horses. Right of way across Curragh.	Yearly tenant, 20a.	Allowed pasturage of sheep in respect of 7a. Remainder of claim disallowed.	7
83	Michael Conlan	Do.	Common of pasture.	Yearly tenant, 8a.	Allowed pasturage of sheep in respect of 8a.	8
105	Mathew Doyle	Do.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way across Curragh.	Yearly tenant, 4a.	Disallowed.	
110	James Dowling	Do.	Common of pasture. Right of collecting and depositing sheep manure on Curragh.	Freehold, house and yard	Disallowed.	
201	Henry Hart	Do.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way across Curragh.	Yearly tenant, house and garden	Disallowed.	
203	Catherine Hyland	Do.	Common of pasture	Yearly tenant, 100a.	Allowed pasturage of sheep in respect of 100a.	100

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	—	No. of Sheep allowed.
207	James Igoe -	Brownstown —cont.	Common of pasture. Right of passage across Curragh.	Yearly tenant, 1a. 3r. 16p.	Disallowed.	
263	Ellen Lynch -	Do.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way across Curragh.	Freehold, house -	Disallowed.	
278	Patrick Mahon -	Do.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way across Curragh.	Yearly tenant, house and garden	Disallowed.	
282	Thomas Millar -	Do.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way across Curragh.	Yearly tenant, house and garden	Disallowed.	
283	Mary Monaghan -		Common of pasture. Compensation for occupation of Curragh by Camp. Right of way across Curragh.	Yearly tenant, 4a. - -	Disallowed.	
315	Mary Moore -	Do.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way across Curragh. Compensation for injury sustained by erection of sewage works in the vicinity of her stables.	Yearly tenant, 1a. - -	Disallowed.	
324	James Murphy -	Do.	Common of pasture -	Leaseholder and yearly tenant, 45a.	Disallowed.	
332	Edward McDonnell	Do.	Common of pasture. Compensation for occupation of Curragh by Camp. Right of way across Curragh.	Yearly tenant, 4a. - -	Disallowed.	
352	Ellen Perry -	Do.	Same as above -	Yearly tenant, 6a. - -	Allowed pasture of sheep in respect of 6a. Remainder of claim disallowed.	6
80	Michael Clancy -	Do.	Common of pasture. Compensation for occupation of Curragh by Camp and injuries by sewerage.	Yearly tenant, 37a. - -	Allowed pasture of sheep in respect of 37a. Remainder of claim disallowed.	37

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
280	The Dean and Chapter of St. Bridget, Kildare.	Collicknock (including Gorteen and Glandabreitas) and Carna.	Common of pasture	Owners in fee as an Ecclesiastical Corporation. Collicknock, &c. 77a. Carna, &c. 110a. Total 187a.	Allowed (in respect of 174a.) pasturage of sheep for tenants in occupation of claimants' lands, with reversion of said pasturage to claimants, not exceeding 174 sheep.
67	Patrick Connolly	Collicknock	Common of pasture	Leaseholder, 9a. 3r. 30p. -	Allowed pasturage of sheep in respect of 9a.
92	Michael Dunne	Do.	Common of pasture	Leaseholder, 32a. 1r. 30p. -	Allowed pasturage of sheep in respect of 32a.
98	Michael Dunne	Do.	Common of pasture. Right of way and use of water on the Curragh.	Leaseholder, 32a. 1r. 30p. -	Withdrawn.
99	Patrick Dunne	Do.	Common of pasture	Leaseholder, 5a. 2r. -	Disallowed.
102	Martin Dunne	Do.	Common of pasture	Leaseholder, 13a. 0r. 25p. -	Allowed pasturage of sheep in respect of 13a.
91	Martin Dunne	Do.	Common of pasture	Leaseholder, 14a. -	Withdrawn.
169	James Grattan	Do.	Common of pasture	Leaseholder, 16a. -	Allowed pasturage of sheep in respect of 16a.
94a	Charles Dunne	Do.	Common of pasture	Leaseholder, 9a. -	Allowed pasturage of sheep in respect of 9a.
96	Patrick Dunne	Do.	Common of pasture	Leaseholder, 5a. 2r. -	Withdrawn.
114	Patrick Doucey	Do.	Common of pasture. Right of training horses on Curragh.	Yearly tenant, 3a. 3r. -	Withdrawn.
115	Patrick Doucey	Do.	Common of pasture. Right of way across Curragh. Right of training horses on Curragh.	Yearly tenant, 4a. -	Withdrawn.
343	William Orford	Carna	Common of pasture. Right of way across Curragh.	Yearly tenant, 90a. -	Disallowed.
2	Christopher Bagot	Do.	Common of pasture	Leaseholder, 110a. -	Allowed (in respect of 95a.) pasturage of sheep for tenants (claims Nos. 42 and 180) in occupation of claimant's lands, with reversion of said pasturage to claimant during his lease, not exceeding 95 sheep.
42	John Byrne	Do.	Common of pasture	Tenant at will, 60a. -	Allowed pasturage of sheep in respect of 60a.
180	Thomas Grady	Do.	Common of pasture	Tenant at will, 35a. -	Allowed pasturage of sheep in respect of 35a.

These form part of the above 187a.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
65	Nicholas Colton	Bishop's land	Common of pasture	Yearly tenant, 8a. - - -	8
372	Daniel Trainer	Do.	Common of pasture	Yearly tenant, 2a. - - -	
32	Henry Brereton	Do.	Common of pasture	Yearly tenant, 4a. - - -	4
168	James Grattan	- - -	Common of pasture	Yearly tenant, 12a. Sr. 34p.	12
67	Patrick Connolly	Kildare lands	Common of pasture	Leaseholder, 25a. Sr. 39p. -	25
4	Patrick Bartley	Rahilla	Common of pasture	Yearly tenant, 9a. 1r. 20p. -	
100	John Dunne	Rahilla and Crocanure glebe.	Common of pasture	Yearly tenant— A. Rahilla - - 37 Crocanure Glebe 18 Total - 55	55
204	Mary Hughes	Rahilla	Common of pasture	Tenant at will, 39a. Sr. 17p.	39
85	James Conlan	Rahilla	Common of pasture	Tenant at will, 40a. -	40
18	Sir Erasmus Dixon Burrowes.	Grey Abbey and White Abbey.	Common of pasture	Owner in fee under a Patent granting commonage on Curragh— A. Grey Abbey - - 103 White Abbey - - 3 Total - 106	103
94	Charles Dunne	White Abbey	Common of pasture	Yearly tenant of Sir Erasmus Burrowes, Bart., 3a.	3
388	Charles Colthurst Vesey.	Cornelscourt	Common of pasture	Owner in fee, 143a. Sr. 29p. -	
23	John Boland	Do.	Common of pasture	Yearly tenant, under C. C. Vesey, 21a. 1r. 19p.	21
362	James Sex	Do.	Common of pasture	Yearly tenant, under C. C. Vesey, 66a.	66

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
389	Charles Vesey.	Clongoun-agh.	Common of pasture	Owner in fee, 30a. 1r. -	Allowed (in respect of 30a.) pasturage of sheep for the tenant (claim No. 366) in occupation of claimant's lands, with reversion of said pasturage to claimant, not exceeding 30 sheep.
386	Thomas Sullivan and John Sullivan.	Do.	Common of pasture	Yearly tenant of C. C. Vesey, 30a. 1r. -	Withdrawn in favour of landlord. Allowed pasturage of sheep in respect of 30a.
390	Charles Colthurst Vesey.	Hawkfield	Common of pasture for self and tenants.	Owner in fee, 227a. 2r. 32p. -	Allowed (in respect of 65a.) pasturage of sheep for tenants (claims Nos. 74 and 98) in occupation of claimant's lands, with reversion of said pasturage to claimant, not exceeding 65 sheep.
74	Patrick Connor	Do.	Common of pasture	Yearly tenant of C. C. Vesey, 20a. 1r. 19p. -	Withdrawn in favour of landlord. Allowed pasturage of sheep in respect of 20a.
98	Patrick Dunne	Do.	Common of pasture	Yearly tenant of C. C. Vesey, 45a. 2r. 29p. -	Withdrawn in favour of landlord. Allowed pasturage of sheep in respect of 45a.
101	Thomas Dunne	Do.	Common of pasture	Yearly tenant of C. C. Vesey, 20a. 3r. 38p. -	Disallowed.
391	Charles Colthurst Vesey.	Piercetown	Common of pasture for self and tenants.	Owner in fee, 81a. Irish -	Disallowed.
392	Charles Colthurst Vesey.	Rickards-town.	Common of pasture for self and tenants.	Owner in fee, 34a. 2r. 37p. -	Disallowed.
386	Charles Colthurst Vesey.	Rosberry	Common of pasture for self and tenants.	Owner in fee, 368a. 0r. 28p. -	Allowed (in respect of 177a.) pasturage of sheep for tenants (claims Nos. 152, 143, 182, 184, and 371) in occupation of claimant's lands, with reversion of said pasturage to claimant, not exceeding 177 sheep.
152	Edward Flood	Do.	Common of pasture	Leaseholder, under C. C. Vesey, 40a. 2r. 38p. -	Withdrawn in favour of landlord. Allowed pasturage of sheep in respect of 40a.
143	John Farrell	Do.	Common of pasture	Leaseholder, 28a. -	Withdrawn in favour of landlord. Allowed pasturage of sheep in respect of 28a.
182	Patrick Grady, jun.	Do.	Common of pasture	Leaseholder, 67a. 2r. 34p. -	Withdrawn in favour of landlord. Allowed pasturage of sheep in respect of 67a.
184	Patrick Grady, sen.	Do.	Common of pasture	Leaseholder, 17a. 1r. 5p. -	Withdrawn in favour of landlord. Allowed pasturage of sheep in respect of 17a.
181	Richard Grady	Do.	Common of pasture	Leaseholder, 11a. -	Disallowed.
371	Edward Tierney	Do.	Common of pasture	Leaseholder, 25a. 1r. 9p. -	Withdrawn in favour of landlord. Allowed pasturage of sheep in respect of 25a.
387	Charles Colthurst Vesey.	Scarletstown	Common of pasture for self and tenants.	Owner in fee, 74a. 3r. 31p. -	Allowed (in respect of 38a.) pasturage of sheep for the tenant (claim No. 141) in occupation of claimant's lands, with reversion of said pasturage to claimant, not exceeding 38 sheep.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
141	Denis Farrell	Scarletstown	Common of pasture	Leaseholder, under C. C. Vesey, 38a. 1r. 3p.	98
148	Thady Farrell	Do.	Common of pasture	Leaseholder, 33a. 2r. 36p.	-
309	Reps. Henry Moore.	Moorefield	Common of pasture. Right of way from the road leading from Uncle Tom's Cabin to the Camp, to the dwelling-house and offices situate on Ballymannny, and called Lumville.	In fee, 250a.	-
104	Patrick Doyle	Do.	Common of pasture	Leaseholder as to part, } 53a. 1r. Yearly tenant as to part, } 24p. under Reps. Henry E. Moore.	53
19	Wm. Hawker Bourne	Do.	Common of pasture	Leaseholder, 14a. 3r.	-
48a	George Burdett	Ballymannny	Common of pasture	In fee, 315a.	-
378	Mary Toole	Do.	Common of pasture. Compensation for loss of sheep manure.	Tenant at will, 2½a.	-
62	Charles Canavan	Do.	Common of pasture	Freehold house and 2r.	-
165	James Flanagan	Do.	Common of pasture	Yearly tenant, 67a.	67
233	Thomas Keenan	Do.	Common of pasture	Leaseholder, 20a.	20
310	Reps. of the late Henry E. Moore.	Do.	Common of pasture	Leaseholder, 107a.	-
319	Michael Murphy	Do.	Common of pasture	Leaseholder, 27a. 2r.	-
358	William Ryan	Do.	Common of pasture	Yearly tenant, 118a.	118
250	Elizabeth M. Kennedy, Ellen Kennedy, and Annie Kennedy (spinners).	Ballyshan-non.	Right of way across Curragh.	-	-
349	Eyre Powell	Great Connell	Common of pasture	Tenant for life under settlement of the fee; under Letters Patent granting commonage on Curragh. 780a.	600

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
179	Francis Douglas Gray.	Great Connell— <i>cont.</i>	Common of pasture	Leaseholder under Eyre Powell, 101a. 2r. 37p.	96
145	Patrick Farrell	Do.	Common of pasture	Yearly tenant under Eyre Powell, 50a.	50
22	William Bobbett, on behalf of himself and of the owner in fee.	Do.	Common of pasture	Leaseholder, 170a.	170
324a	George Patrick Lettin Mansfield, and George Mansfield (his son).	Old Connell	Common of pasture	In fee under Letters Patent granting commonage on the Curragh, 63a.	63
348	Peter de P. O'Kelly	Little Connell.	Common of pasture	In fee under Letters Patent granting commonage on the Curragh, 37a.	37
272	Francis Leigh and Fras. Charles Leigh.	Friarstown	Common of pasture	In fee, 295a. 1r. 32p.	
304	John Moore	Do.	Common of pasture	Leaseholder, under Francis Leigh and Francis C. Leigh, 6a.	12
307	Edward Moore	Do.	Common of pasture. Right of way over Curragh.	Yearly tenant under same, 12a. 2r.	
311	Edward Moore	Do.	Common of pasture	Leaseholder under same, 30a. 3r. 10p.	30
317	Peter Murphy	Do.	Common of pasture	Leaseholder under same, 5a.	
405a	Anne Wynne	Do.	Common of pasture	Yearly tenant under same, 19a.	
32	Henry Brereton	Do.	Common of pasture	Leaseholder under same, 82a. 2r. 25p.	82
72	John Cronley	Do.	Common of pasture	Leaseholder under same, 24a.	24
97	Patrick Dunne	Do.	Common of pasture	Leaseholder under same, 5a.	5
140	Edward Farrell	Do.	Common of pasture	Leaseholder under same, 11a. 2r.	
206	Edward Hogarty	Do.	Common of pasture	Yearly tenant under Francis Leigh, 2a. 3r. and 1a. 2r. under Henry Brierton.	4
219	Joseph Kelly	Do.	Common of pasture	Leaseholder under F. and C. Leigh, 61a.	
235	William Kavanagh	Do.	Common of pasture	Leaseholder under same, 2a. 2r. - 2a.	2

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
237	Michael Keegan -	Friarstown	Common of pasture	Leaseholder, 18a.	Disallowed.
322	Lawrence Murphy -	p—const. Clogarrett, Little.	Common of pasture. Right of way across Curragh.	Yearly tenant, 10a.	Disallowed.
359	Charles Ryan, on behalf of his tenant, Stephen Conlan.	Crodenstown	Common of pasture	Held in fee, 27a. -	Allowed pasturage of sheep in respect of 27a., for claimant's tenant, with reversion of said pasturage to claimant.
189	John Healy -	Kilmesque and Bal-lyteague	Common of pasture	Freehold, 140a. -	Disallowed.
131	Jas. Dunney, on behalf of himself and of Mrs. McGann, owner in fee.	Newtown Suncroft.	Common of pasture	Leaseholder, 50a.	Allowed pasturage of sheep in respect of 50a., with reversion of said pasturage to the owner in fee.
15	Patrick Birmingham, on behalf of himself and Robert Higginson Borrowes, owner in fee.	Mooretown Castle.	Common of pasture	Yearly tenant, 24a. 3r.	Allowed pasturage of sheep in respect of 24a., with reversion of said pasturage to the owner in fee.
43	Denis Byrne -	Do.	Common of pasture	Yearly tenant, 40a.	Disallowed.
377	Moses Taylor, on behalf of himself and of James Egan, owner in fee.	Morristown Biller.	Common of pasture	Leaseholder, 188a. 2r. 17p.	Allowed pasturage of sheep in respect of 160a. Allowed (in respect of 23a.) pasturage of sheep for tenant (claim No. 145) in occupation of claimant's land, with reversion of said pasturage to claimant during his lease, with reversion in respect of 188a. to the owner in fee, not exceeding 183 sheep.
145	Patrick Farrell -	Do.	Common of pasture	Yearly tenant, 23a.	Allowed pasturage of sheep in respect of 23a.
229	Colonel Thomas C. Kelly.	Lough-browne.	Common of pasture	In fee, 115a. 0r. 6p.	Allowed, in respect of 95a., pasturage of sheep for tenants (claims Nos. 100 and 145) in occupation of claimant's lands, with reversion of said pasturage to claimant, not exceeding 95 sheep.
100	John Dunne -	Do.	Common of pasture	Leaseholder and yearly tenant, under Col. T. C. Kelly, 50a.	Allowed pasturage of sheep in respect of 50a.
145	Patrick Farrell -	Do.	Common of pasture	Leaseholder under same, 45a. 2r. 38p.	Allowed pasturage of sheep in respect of 45a.
238	Laurence Keegan, jun.	Do.	Common of pasture. Right of training horses on Curragh. Right of way across Curragh.	Yearly tenant, 3a.	Disallowed.



No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any claimed).	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
243	Phelam Keegan	Loughbrowne	Common of pasture	Yearly tenant, 1a.	Disallowed.
16	St. John Thomas Blacker.	Kinnea	Common of pasture	Fee-farm, 276a. 3r. 14p.	Allowed, in respect of 24a., pasturage of sheep for tenant in occupation of claimant's lands (claim No. 394), with reversion of said pasturage to claimant, not exceeding 24 sheep.
296	Michael Kelly	Do.	Common of pasture. Compensation for land taken by Camp. Right of way across the Curragh. Use of well and pond on Curragh.	Yearly tenant, 1a. Or. 5p.	Allowed access to well and pond, as shown by the map before referred to. Remainder of claim disallowed.
288	Thomas Mullread	Do.	Do.	Yearly tenant of house and garden.	Allowed access to well and pond, as shown by the map before referred to. Remainder of claim disallowed.
289	John Moir	Do.	Common of pasture	Leaseholder, 150a.	Disallowed.
351	John Power	Do.	Common of pasture. Right of way across Curragh.	Yearly tenant, 6a.	Disallowed.
354	Alexander Ritchie	Do.	Common of pasture	Leaseholder, 50a.	Disallowed.
394	Margaret Walsh	Do.	Common of pasture. Right of way to public road. Use of well and pond on Curragh. 100l compensation for land taken in by Camp.	Yearly tenant under St. John Thomas Blacker, 24a.	Allowed pasturage of sheep in respect of 24a. Allowed access to well and pond and right of way to public road, as shown by the map before referred to. Remainder of claim disallowed.
369	James Tobin	Do.	Common of pasture. Right of way across Curragh.	Yearly tenant, 3a. 3r. 13p.	Disallowed.
291	John F. Meekings	Knockawlin	Common of pasture. Right of way from his boundary to public road.	In fee, 182a. Or. 38p.	Allowed, in respect of 171a., pasturage of sheep for tenants (claims Nos. 342 and 403) in occupation of claimant's lands, with reversion of said pasturage to claimant, not exceeding 171 sheep. Access to public road allowed, as shown by the map before referred to.
342	William Orford, sen.	Do.	Common of pasture. Right of way to public road.	Leaseholder under J. F. Meekings, 64a.	Allowed pasturage of sheep in respect of 64a. Access to public road allowed, as shown by the map before referred to. Withdrawn.
355	Patrick Ronan	Do.	Common of pasture. Right of way, &c.	Freehold cabin	Disallowed.
403	Michael Waters	Do.	Common of pasture	Leaseholder under J. F. Meekings, 107a.	Allowed pasturage of sheep in respect of 107a.
64	William Cooke	Do.	Common of pasture	Freehold	Disallowed.
245	James Keegan	Do.	Common of pasture	Leaseholder, 11a.	Disallowed.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
325	Laurence McDermott.	Knockawlin	Common of pasture	Freehold cottage and garden	Withdrawn.
17	Sir Erasmus Dixon Borrowes, Bart.	Strawhall - cont.	Common of pasture	In fee, 40a.	Allowed (in respect of 25a.) pasture of sheep for tenant (claim No. 120) in occupation of claimant's land, with reversion of said pasture to the owner in fee, not exceeding 25 sheep.
122	Augustine Davies	Do.	Common of pasture	Leaseholder, 29a.	Withdrawn.
120	Rev. Francis Davies	Do.	Common of pasture	Leaseholder, 25a.	Allowed pasture of sheep in respect of 25a.
367	Robert Ball Steele, and Robert Ball Steele, his eldest son.	Rathbride (New-town and Rolicke town).	Common of pasture	In fee under settlement, 1,100a.	Allowed (in respect of 700a.) pasture of sheep for tenants in occupation of claimants' lands, with reversion of said pasture to claimants, not exceeding 700 sheep.
8	Richard Beahan	Rathbride	Common of pasture. Compensation for loss of sheep manure.	Tenant at will under R. B. Steele, 2a.	Disallowed.
14	William Bergin	Do.	Common of pasture. Right of way across Curragh.	Tenant at will under R. B. Steele, 21a.	Disallowed.
54	Patrick Cleary	Do.	Common of pasture. Right of way across Curragh.	Yearly tenant under R. B. Steele, 64a.	Allowed pasture of sheep in respect of 64a. Right of way disallowed.
72	John Cronley	Do.	Common of pasture. Right of way across Curragh.	Tenant at will under R. B. Steele, 8a. 2r.	Allowed pasture of sheep in respect of 8a. Right of way disallowed.
89	Alice Cleary	Do.	Common of pasture. Right of water on the Curragh.	Yearly tenant under R. B. Steele, 75a.	Allowed pasture of sheep in respect of 75a. Remainder of claim disallowed.
108	Michael Dowling	Do.	Common of pasture	Tenant at will under R. B. Steele, 54a.	Allowed pasture of sheep in respect of 54a.
128	Thomas Dennell	Do.	Common of pasture	Yearly tenant under R. B. Steele, 51a.	Allowed pasture of sheep in respect of 51a.
216	Thomas Kelly	Do.	Common of pasture	Yearly tenant - 47a. Leaseholder - 15a.	Allowed pasture of sheep in respect of 62a.
220	Richard Kelly	Do.	Common of pasture	Yearly tenant under R. B. Steele, 62a.	Allowed pasture of sheep in respect of 80a.
222	Bartholemew Kelly	Do.	Common of pasture	Yearly tenant under R. B. Steele, 80a.	Allowed pasture of sheep in respect of 9a.
225	Michael Kelly	Do.	Common of pasture	Yearly tenant under R. B. Steele, 9a.	Withdrawn.
300	Patrick Moore	Do.	Common of pasture	Yearly tenant of Mrs. Mary Anne Orford, under R. B. Steele, 7a.	Allowed pasture of sheep in respect of 7a.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
306	John Moore -	Rathbride— <i>cont.</i>	Common of pasture. Right of way across Curragh. Right of watering cattle. Compensation, 100l.	Yearly tenant, R. B. Steele, 13a. 2r.	13
312	Edward Moore	Do.	Common of pasture	Yearly tenant, 36a.	36
313	Margaret Moore	Do.	Common of pasture	Tenant at will, 20a.	Disallowed.
314	Anne Moore -	Do.	Common of pasture. Right of way from claimant's land to public road.	Yearly tenant, R. B. Steele, 5a.	5
335	James Nolan -	Do.	Common of pasture	Yearly tenant to R. B. Steele, 21a.	21
174	Catherine Glinn	Do.	Common of pasture	House free	Disallowed.
175	Michael Gilfoil	Do.	Common of pasture	Free house and garden	Disallowed.
347	Mrs. Mary Anne Orford.	Do.	Common of pasture. Right of way across Curragh.	Leaseholder under R. B. Steele	Withdrawn.
344	Mrs. Mary Anne Orford.	Do.	Common of pasture	Leaseholder under R. B. Steele, 113a.	113
327	Patrick McDonough	Do.	Common of pasture	Occupier for C. St. George, 4r.	Disallowed.
381	Edward Tiernan	Do.	Common of pasture. Right of way across Curragh.	At will, 10a.	Withdrawn.
382	Patrick Tiernan	Do.	Common of pasture	Yearly tenant under R. B. Steele, 8a.	8
383	James Tiernan	Do.	Common of pasture	Yearly tenant under R. B. Steele, 53a.	79
				Leaseholder under R. B. Steele, 28a.	
384	Mary Tiernan	Do.	Common of pasture	Tenant at will under R. B. Steele, 81a.	10
396	Thomas Walsh	Do.	Common of pasture	10a. 2r.	10a.
157	John Foran -	Do.	Common of pasture	Tenant at will under R. B. Steele, 6a.	5
31	George L. Bryan	Walshestown	Common of pasture	Caretaker under Mrs. Orford, 2a.	Disallowed.
				In fee under a Patent granting commonage on the Curragh	Allowed (in respect of 307a.) pasturage of sheep for tenants (claims Nos. 86, 168, 171, 398, and 401) in occupation of claimant's lands, with reversion of said pasturage to claimant, not exceeding 307 sheep.
				Fee-simple - 133 1 20 - 267 3 0 Total - - 401 0 20	

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
46	Peter Buckley	Walshstown —cont.	Common of pasture. Right of way across Curragh.	Disallowed.	30
86	Stephen Conlan	Do.	Common of pasture -	Yearly tenant, 30a. -	Allowed pasturage of sheep in respect of 30a.
112	Thomas Dowling	Do.	Common of pasture -	Yearly tenant, 18a. 2r. 3p. -	Disallowed.
163	James Fegan	Do.	Common of pasture -	Yearly tenant, 88a. -	Allowed pasturage of sheep in respect of 88a.
171	William Gannon	Do.	Common of pasture -	Yearly tenant, 98a. -	Allowed pasturage of sheep in respect of 98a.
197	Patrick Hanlon	Do.	Common of pasture -	Yearly tenant, 43a. -	Disallowed.
323	Christopher Murphy	Do.	Common of pasture -	Yearly tenant, 16a. -	Disallowed.
398	Thomas Whyte	Do.	Common of pasture -	Yearly tenant, 73a. -	Allowed pasturage of sheep in respect of 73a.
401	Martin Whelan	Do.	Common of pasture -	Yearly tenant, 18a. -	Allowed pasturage of sheep in respect of 18a.
46	Peter Buckley	Black Ditch	Common of pasture -	Yearly tenant, 115a. -	Disallowed.
186	Hans Hendrick	Tully or French Furze	-	-	Withdrawn.
187	Hans Hendrick	Do.	Common of pasture -	In fee, 1,104a. 5r. 94p. -	Allowed (in respect of 583a.) pasturage of sheep for tenants (claims Nos. 4, 280, 289, 271, 302, 364, 81, 103, 166, 196, 223, and 240) in occupation of claimant's lands, with reversion of said pasturage to claimant, not exceeding 583 sheep. Withdrawn.
188	Hans Hendrick	Do.	-	-	Disallowed.
3	James Bambrick	Do.	Common of pasture -	Tenant at will, cottage and garden	Allowed pasturage of sheep in respect of 10a.
4	John Beahan	Do.	Common of pasture -	Tenant at will, 10a. -	Disallowed.
90	John Bradshaw	Do.	Common of pasture. Compensation for loss of sheep manure.	Cottage; caretaker - - -	Disallowed.
75	Joseph Confrey	Do.	Common of pasture -	Yearly tenant, 38a. -	Disallowed.
960	Anne Lennox	Do.	Common of pasture -	At will, 47a. - - -	Allowed pasturage of sheep in respect of 47a.
267	Michael Lee	Do.	Common of pasture -	Leaseholder, 192a. 2r. 36p. -	Withdrawn.
269	William Lee	Do.	Common of pasture -	Leaseholder, 22a. 3r. 28p. -	Allowed pasturage of sheep in respect of 28a.
271	Mathew Lawler	Do.	Common of pasture -	Yearly tenant, 18a. -	Allowed pasturage of sheep in respect of 18a.
302	John Moore	Do.	Common of pasture. Right of way across Curragh.	Leaseholder, 110a. 0r. 30p. -	Allowed pasturage of sheep in respect of 110a. Right of way disallowed.
320	Daniel Murphy	Do.	Common of pasture. Compensation for loss of sheep manure.	At will; cabin - - -	Disallowed.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	—	No. of Sheep allowed.
326	Patrick McDonald -	Tully or French Furze - -cont.	Common of pasture. Compensation for loss of sheep manure.	Caretaker, 1a. - - - -	Disallowed.	
361	Simon Ryan -	Do.	Common of pasture. Right of way over Curragh.	Leaseholder, 86a. - - -	Allowed pasture of sheep in respect of 86a. Right of way disallowed.	86
399	Charles Westlake -	Do.	Common of pasture -	Freehold cottage - - -	Disallowed.	
81	FitzJames Clancy -	Do.	Common of pasture -	Leaseholder, 12a. 1r. -	Allowed pasture of sheep in respect of 12a.	12
103	John Doyle -	Do.	Common of pasture. Right of exercising horses and way over Curragh.	Yearly tenant, 10a. - -	Allowed pasture of sheep in respect of 10a. Remainder of claim disallowed.	10
125	Mathew O'Donoghoe	Do.	Common of pasture -	At will, house and yard -	Disallowed.	
166	James Fay -	Do.	Common of pasture. Right of way over Curragh.	Leaseholder, 175a. - - -	Allowed pasture of sheep in respect of 175a. Right of way disallowed.	175
196	Mary Haulon -	Do.	Common of pasture. Right of hooping wheels and use of gallops.	Leaseholder, 6a. - - -	Allowed pasture of sheep in respect of 5a. Remainder of claim disallowed.	5
198	Michael Houlahan -	Do.	Common of pasture. Compensation for loss of sheep manure.	- - - - -	Disallowed.	
223	Mathew Kelly -	Do.	Common of pasture. Right of way across Curragh.	Yearly tenant, 42a. - - -	Allowed pasture of sheep in respect of 42a. Right of way disallowed.	42
240	Laurence Keegan, sen.	Do.	Common of pasture. Right of exercising horses. Right of way over the Curragh.	Leaseholder, 40a. - - -	Allowed pasture of sheep in respect of 40a. Remainder of claim disallowed.	40
295	Euphemia Eleonora Hodson, on behalf of herself and of Rev. John Bonham, owner in fee.	Sunny Hill	Common of pasture -	Leaseholder, 240a. - - -	Allowed (in respect of 189a.) pasture of sheep for tenants in occupation of claimant's lands (claims Nos. 369 and 395), with reversion of said pasture to claimant, and to the owner in fee, not exceeding 139 sheep.	
296	Elizabeth Moran -	Do.	Common of pasture -	House and garden - - -	Disallowed.	
369	James Tobin -	Do.	Common of pasture. Right of way from house to public road.	Leaseholder, 9a. 2r. 30p. -	Allowed pasture of sheep in respect of 9a. Access to public road allowed, as shown by the map before referred to.	9
395	Thomas Walsh -	Do.	Common of pasture -	Leaseholder, 130a. - - -	Allowed pasture of sheep in respect of 130a.	130

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed
292	John F. Meekings	North and South Glebe, Knock-bounce, and Old Kilcullen.	Common of pasture -	In fees, 68a. 3r. 17p. -	Disallowed.
126	Thomas Dempsey	Do.	Common of pasture -	Leaseholder, 18a. 1r. 39p.	Disallowed.
374	Esther Tougher	Do.	Common of pasture -	Leaseholder and yearly tenancy, 8a.	Disallowed.
26	John Brennan	Do.	Common of pasture -	Leaseholder, 83a. 3r. 5p.	Disallowed.
368	Patrick Salmon	Old Kilcullen.	Common of pasture. Right of way across the Curragh.	Tenant at will, 4a. 3r. -	Disallowed.
121	Rev. Francis Davies	Not mentioned.	-	-	Withdrawn.
119	Joseph Davis	Do.	-	-	Withdrawn.
276	John Mooney	Town of Kildare.	Common of pasture -	Freehold, three houses -	Disallowed.
61	Denis Casey	Not mentioned.	Common of pasture -	Freehold cottage and garden -	Disallowed.
51	Mary McCartin	Not mentioned.	-	-	Withdrawn.
254	His Grace The Duke of Leinster, Marquis of Kildare, and Earl of Offaly.	Meddens-town.	Common of pasture for selves and tenants. Right of way to and from Curragh.	The Duke, tenant for life under settlement of the fee with remainder, 603a.	Allowed (in respect of 905a.) pasturage of sheep for tenants (claims Nos. 37, 56, 117, 122, 134, 214, 320, 336, 398) in occupation of claimants' lands, with reversion of said pasturage to claimants, not exceed- ing 265 sheep. Right of way disallowed.
57	Maurice Caffrey	Do.	Common of pasture	Yearly tenant under the Duke of Leinster, 25a.	Allowed pasturage of sheep in respect of 20a.
58	Thomas Caffrey	Do.	Common of pasture	Yearly tenant under same, 7a. -	Allowed pasturage of sheep in respect of 7a.
109	William Dowling	Do.	Common of pasture	Yearly tenant under same, 16a. -	Disallowed.
117	Denis Dooney	Do.	Common of pasture	Yearly tenant under same, 17a. -	Allowed pasturage of sheep in respect of 17a.
132	James Dunney	Do.	Common of pasture	Yearly tenant under same, 37a. -	Allowed pasturage of sheep in respect of 37a.
133	Michael Doogan	Do.	Common of pasture	Yearly tenant under same, 37a. -	Disallowed.
134	Lawrence Doogan	Do.	Common of pasture	Yearly tenant under same, 37a. -	Allowed pasturage of sheep in respect of 37a.
176	James Graney	Do.	Common of pasture	Yearly tenant under same, 32a. 2r.	Disallowed.
214	Patrick Keane	Do.	Common of pasture	Yearly tenant under same, 60a. -	Allowed pasturage of sheep in respect of 60a.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
393	Richard Newcomen	Maddens-town— <i>cont.</i>	Common of pasture	Yearly tenant under same, 48a.	48
396	Patrick Owens	Do.	Common of pasture	Yearly tenant under same, 44a.	43
398	Jane Owens	Do.	Common of pasture	Yearly tenant under same, 11a.	11
346	Patrick Orford	Do.	Common of pasture	Yearly tenant under same, 109a.	Disallowed.
60	Thomas Caffrey	Do.	Common of pasture	Tenant at will, 8a.	Withdrawn.
90	Denis Dooney	Do.	Common of pasture	Tenant at will, 17a.	Withdrawn in favour of claim 117.
215	Patrick Keane	Do.	Common of pasture. Right of way to and from house and land to Curragh.	Yearly tenant 100a.	Withdrawn in favour of claim 214.
397	Patrick Owens	Do.	Common of pasture	Tenant at will, 44a.	Withdrawn in favour of claim 396.
345	Patrick Orford	Do.	Common of pasture. Passage to and from house to Curragh and adjoining fair and market towns.	- - - 135a.	Withdrawn in favour of claim 346.
368a	John Smith	Do.	Common of pasture. Compensation for loss of gathering sheep manure.	Caretaker to Richard Newcomen, cottage—no land.	Disallowed.
191	James Dunney	Do.	Common of pasture. Passage across Curragh.	Yearly tenant, 40a.	Disallowed.
256	His Grace The Duke of Leinster, Marquis of Kildare, and Earl of Offaly.	Walterstown	Common of pasture. Passage to and from Curragh to public road.	The Duke tenant for life, under settlement of the fee with remainders, 40a.	Disallowed.
153	John Flood	Do.	Common of pasture	Yearly tenant, 40a.	Disallowed.
259a	His Grace The Duke of Leinster, Marquis of Kildare, Earl of Offaly.	Red Hills	Common of pasture for selves and tenants. Right of way to and from Curragh.	The Duke tenant for life, under settlement of the fee with remainders, 73a.	Allowed, in respect of 72a., pasturage of sheep, for tenant (claim No. 155) in occupation of claimants' land, with reversion of said pasturage to claimants, not exceeding 72 sheep. Right of way disallowed.
155	William Forbes	Do.	Common of pasture. Right of way to and from the Curragh.	Yearly tenant under the Duke of Leinster, 73a.	Allowed pasturage of sheep in respect of 72a. Right of way disallowed.
259	Duke of Leinster, Marquis of Kildare, and Earl of Offaly.	Dunmurry	Common of pasture for selves and tenants.	The Duke tenant for life, under settlement of the fee with remainders, 181a.	Allowed (in respect of 94a.) pasturage of sheep for tenant (claim No. 279) in occupation of claimants' land, with reversion of said pasturage to claimants, not exceeding 94 sheep.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
97	Patrick Dunne	Dunmurry—cont.	Common of pasture	Tenant at will under the Duke of Leinster, 3a. 2r.	Disallowed.
107	Michael Dowling	Do.	Common of pasture	Yearly tenant under same, 141a.	Disallowed.
279	Patrick Murrin	Do.	Common of pasture	Also 28a. at Conlanstown.	Allowed pasture of sheep in respect of 94a.
281	James Edw. Medlicott.	Do.	Common of pasture	Yearly tenant under same, 94a.	Allowed pasture of sheep in respect of 207a. Allowed, in respect of 45a., pasture of sheep, for tenant (claim No. 318), in occupation of claimants' land, with reversion of said pasture to claimants, not exceeding 45 sheep.
318	Philip Murphy	Do.	Common of pasture	In fee, 311a.	Allowed pasture of sheep in respect of 45a.
341	James Owens	Do.	Common of pasture	Yearly tenant under J. E. Medlicott, 103a.	Disallowed.
238	Duke of Leinster, Marquis of Kildare, and Earl of Offaly.	Blackmuller's Hill-	Common of pasture for selves and tenants. Right of way to and from Curragh.	Cottage occupied as shepherd - The Duke tenant for life, under settlement of the fee with remainders, 71a.	Allowed (in respect of 54a.) pasture of sheep for tenants (claims Nos. 21, 244, and 397) in occupation of claimants' lands, with reversion of said pasture to claimants, not exceeding 54 sheep.
21	Christopher Boyle	Do.	Common of pasture	Yearly tenant under the Duke of Leinster, 6a.	Allowed pasture of sheep in respect of 6a.
244	John Keegan	Do.	Common of pasture	Yearly tenant under same, 44a.	Allowed pasture of sheep in respect of 42a.
334	Patrick Nolan	Do.	Common of pasture	Yearly tenant under same, 6a. 1r. 13p.	Withdrawn.
397	Thomas Walsh	Do.	Common of pasture	Yearly tenant under same, 6a.	Allowed pasture of sheep in respect of 6a.
253	The Duke of Leinster, Marquis of Kildare, and Earl of Offaly.	Kildare, comprising the town of Kildare, Kildare North, Kildare South, and including the following denominations, viz.: Curragh farm, Whitesland, West and East, Loughandes, South Green, Loughmition.	Common of pasture for selves and tenants. Right of way to and from Curragh.	The Duke, tenant for life under settlement of the fee with remainders, 869a. 3r. 13p.	Allowed pasture of sheep in respect of 11a. (claims Nos. 127 and 146). Allowed (in respect of 204a.) pasture of sheep for tenants (claims Nos. 53, 56, 88, 106, 156, 73, 87, 68, 554, 404, 242, 303, and 321) in occupation of claimants' lands, herein-after mentioned, with reversion of said pasture to claimants not exceeding 204 sheep. Right of way disallowed.



No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	—	No. of Sheep allowed.
7	Simon Beahan	Kildare lands —cont.	Common of pasture. Right of way to and from his land to Curragh.	Yearly tenant under the Duke of Leinster, 1r.	Disallowed.	
53	Daniel Cleary	Do.	Common of pasture. Right of way to and from his land to Curragh.	Yearly tenant under the Duke of Leinster, 23a.	Allowed pasturage of sheep in respect of 23a. Right of way disallowed.	23
56	Henry Carey	Do.	Common of pasture. Right of way to and from his land to Curragh.	Yearly tenant under same, 6a. 2r.	Allowed pasturage of sheep in respect of 6a., with reversion to his landlord, claimant No. 88. Right of way disallowed.	6
88	Alicia Colgan	Do.	Common of pasture. Right of way to and from her land to Curragh.	Yearly tenant under same, 69a. -	Allowed pasturage of sheep in respect of 69a. Right of way disallowed.	69
106	Thomas Doyle	Do.	Common of pasture. Right of way to and from his land to Curragh.	Yearly tenant under same, 12a. 1r. 15p.	Allowed pasturage of sheep in respect of 12a. Right of way disallowed.	12
127	James Dempsey	Do.	Common of pasture. Right of way to and from his land to Curragh.	Yearly tenant under same, 9a. -	Disallowed to claimant; but allowed pasturage of sheep to the owner in fee in respect of 9a. Right of way disallowed.	
138	Mary Fitzgerald	Do.	Common of pasture. Right of way to and from her land to Curragh.	Yearly tenant under same, 1a. -	Withdrawn.	
146	Anne Farrell	Do.	Common of pasture -	Yearly tenant under same, 2a. 2r. 8p.	Disallowed to claimant; but allowed pasturage of sheep to owner in fee in respect of 2a.	
156	Anthony Foran	Do.	Common of pasture -	Yearly tenant under same, 4a. -	Allowed pasturage of sheep in respect of 3a. Withdrawn.	3
159	James Finlay	Do.	Common of pasture. Right of way to and from his land to Curragh.	Yearly tenant under same, 23a. -		
236	John Keegan	Do.	Common of pasture -	Cabin - - - -	Disallowed.	
73	James Collins	Do.	Common of pasture -	Yearly tenant under same, 4a. -	Allowed pasturage of sheep in respect of 4a.	4
87	John Colgan	Do.	Common of pasture -	Yearly tenant under same, 6a. -	Allowed pasturage of sheep in respect of 6a.	6
68	Thomas Cooney	Do.	Common of pasture -	Tenant to Alicia Colgan, who holds under the Duke of Leinster, 6a.	Allowed pasturage of sheep in respect of 6a., with reversion to his landlord, claimant No. 88.	6

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	—	No. of Sheep allowed.
55a	Samuel Chaplin	Kildare lands —cont.	Common of pasture	Yearly tenant under the Duke of Leinster, 11a.	Allowed pasturage of sheep in respect of 11a.	11
70	Henry Cooney	Do.	Common of pasture. Right of way to and from his house and land to the Curragh.	Yearly tenant under same, 6a. 0r. 27p.	Withdrawn.	
266	Michael Charles Lee	Do.	Common of pasture. Right of way across the Curragh. Compensation for land taken in by Camp.	Leaseholder under the Duke of Leinster, 16a. 2r. 1p.	Withdrawn.	
180	James Dempsey	Do.	Common of pasture	Tenant at will, 9a.	Withdrawn in favour of claim No. 127.	
4	Patrick Bartley	Do.	Common of pasture	Yearly tenant under same	Disallowed.	
356	Mary Rogers	Do.	Common of pasture. Passage from lands to Camp.	Yearly tenant, 2a.	Withdrawn.	
404	George Warren	Do.	Common of pasture. Passage from lands to Curragh.	Yearly tenant under same, 3a.	Allowed pasturage of sheep in respect of 2a. Passage disallowed.	2
242	Laurence Keegan	Do.	Common of pasture. Right of way from lands to Curragh.	Yearly tenant, 47a.	Allowed pasturage of sheep in respect of 46a. Right of way disallowed.	46
264	William Lee	Do.	Common of pasture. Passage across Curragh. Compensation for land and pasturage taken in by Camp.	Tenant at will, 23a. 2r. 23p.	Disallowed.	
268	Michael Lee	Do.	Common of pasture. Passage across the Curragh. Compensation for land taken in by Camp.	Yearly tenant, 28a.	Withdrawn.	
308	John Moore	Do.	Common of pasture. Passage from land to Curragh.	Yearly tenant, 6a.	Allowed pasturage of sheep in respect of 6a. Passage disallowed.	6
321	Laurence Murphy	Do.	Common of pasture. Right of way from land to Curragh.	Yearly tenant, 11a.	Allowed pasturage of sheep in respect of 10a. Right of way disallowed.	10
265	Michael Charles Lee	Do.	Common of pasture. Passage across the Curragh. Compensation for land taken in by Camp.	Leaseholder, 16a. 2r. 17p. Yearly tenant, 25a. 1r. 23p.	Disallowed.	

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
2596	His Grace the Duke of Leinster, Marquis of Kildare, and Earl of Offaly.	Mooretown	Common of pasture for selves and tenants.	The Duke, tenant for life under settlement of the fee with remainders, 208a.	Disallowed.
47	Thomas Burke	Do.	Common of pasture	Yearly tenant, 5a.	Disallowed.
177	Arthur Garry	Do.	Common of pasture	Yearly tenant, 140a.	Withdrawn.
224	Patrick Kelly	Do.	Common of pasture	Tenant at will, 35a.	Withdrawn.
305	John Moore	Do.	Common of pasture	Tenant at will, 13a.	Withdrawn.
373	Thomas Treacey	Do.	Common of pasture	Tenant at will, 11a.	Withdrawn.
82	Bridget Conlan, and on behalf of the owner in fee.	Do.	Common of pasture	Yearly tenant under Charles Joynt, owner in fee, 45a. 1r. 5p.	Allowed pasture of sheep in respect of 39a.
290	John Frederick Neekings, and on behalf of the owner in fee.	Do.	Common of pasture	Yearly tenant under Charles R. Joynt, owner in fee, 50a.	Disallowed.
192	John Vincent Horan	Do.	Common of pasture. Right of way.	In fee	Withdrawn.
255	His Grace the Duke of Leinster, Marquis of Kildare, and Earl of Offaly.	Milltown	Common of pasture for selves and tenants. Right of way to and from Curragh.	The Duke, tenant for life under settlement of the fee with remainders, 222a.	Allowed (in respect of 54a.) pasture of sheep for tenant (claim No. 921) in occupation of claimants' land, with reversion of said pasture to claimants, not exceeding 54 sheep. Right of way disallowed.
221	Richard Kelly	Do.	Common of pasture	Yearly tenant under the Duke of Leinster, 128a.	Allowed pasture of sheep in respect of 54a.
357	William Ryan	Do.	Common of pasture. Right of way to and from Curragh.	Yearly tenant under same, 39a.	Withdrawn.
360	Richard Ryan	Do.	Common of pasture. Right of way to and from Curragh.	Yearly tenant under same, 38a.	Withdrawn.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
252	His Grace the Duke of Leinster, the Marquis of Kildare, and the Earl of Offaly.	Killengorname.	Common of pasture for selves and tenants. Right of way to and from Curragh.	The Duke, tenant for life under settlement of the fee with remainders, 114a. 2r. 20p.	Allowed (in respect of 113a.) pasture of sheep for tenants in occupation of claimants' lands (claims Nos. 9, 10, 280), with reversion of said pasture to claimants, not exceeding 113 sheep. Right of way disallowed.
9	Patrick Beahan	Do.	Common of pasture. Right of way from lands to Curragh.	Yearly tenant under the Duke of Leinster, 15a.	Allowed pasture of sheep in respect of 15a. Right of way disallowed.
10	Michael Beahan	Do.	Common of pasture. Right of way from lands to Curragh.	Leaseholder under same, 30a.	Allowed pasture of sheep in respect of 29a. Right of way disallowed.
280	John Millway	Do.	Common of pasture	Yearly tenant under same, 69a. 2r. 20p.	Allowed pasture of sheep in respect of 69a.
257	Duke of Leinster, Marquis of Kildare, and Earl of Offaly.	Knocknagallia or Whitesland.	Common of pasture for selves and tenants. Right of way to and from Curragh.	The Duke, tenant for life under settlement of the fee with remainders, 176a. 3r. 22p.	Allowed (in respect of 38a.) pasture of sheep for tenants (claims Nos. 95, 135, and 195) in occupation of claimants' lands, with reversion of said pasture to claimants, not exceeding 38 sheep. Right of way disallowed.
35	Michael Byrne	Do.	Common of pasture. Right of way to and from Curragh.	Yearly tenant under the Duke of Leinster, 8a. 0r. 4p.	Disallowed.
37	John Byrne	Do.	Common of pasture. Right of way to and from Curragh. Right to train horses on Curragh. Compensation for land taken in by Camp.	Yearly tenant under the Duke of Leinster, 17a.	Disallowed.
52	Daniel Cleary	Do.	Common of pasture	Yearly tenant under same, 21a.	Disallowed.
55	Samuel Chaplin	Do.	Common of pasture	Yearly tenant under same, 7a.	Disallowed.
95	Charles Dunne	Do.	Common of pasture	Yearly tenant under same, 15a.	Allowed pasture of sheep in respect of 15a.
135	Thomas Darby	Do.	Common of pasture	Yearly tenant under same, 13a.	Allowed pasture of sheep in respect of 13a.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
194	Thomas Heffernan	Knocknagallia or Whitesland —cont.	Common of pasture. Right of way to and from Curragh.	Yearly tenant under same, 10a. -	10
195	Thomas Heffernan	Do.	Common of pasture -	Tenant at will under same, 10a. -	10
251	His Grace the Duke of Leinster, Marquis of Kildare, and Earl of Offaly.	Pollardstown	Common of pasture for selves and tenants. Right of way to and from Curragh.	The Duke, tenant for life under settlement of the fee with remainder, 546a. 3r. 84p.	10
36	Michael Byrne	Do.	Common of pasture. Right of way.	Yearly tenant under the Duke of Leinster, 1a. 0r. 37p.	1
84	Edward Conlan	Do.	Common of pasture. Right of way.	Yearly tenant under same, 181a.	181
199	Thomas Fitzgerald	Do.	Common of pasture. Right of way.	Yearly tenant under same, 164a.	139
190	Patrick Healy	Do.	Common of pasture. Right of way.	Yearly tenant under same, 122a.	100
200	John Hooney	Do.	Common of pasture. Right of way.	Yearly tenant under same, 124a.	100
243	Phelim Keegan	Do.	Common of pasture -	Part in fee, part yearly tenancy under the Duke of Leinster, 2a.	100
286	The Rev. Warren Cecil Maunsell.	Do.	Common of pasture -	Tenant for life as Rector of Glebe-lands, 1a. 3r. 29p.	1
301	John Moore	Do.	Common of pasture. Compensation for loss of collecting sheep manure and depositing it on Curragh.	Freehold cottage and 3r. -	1

30th June 1869.

HENRY H. JOY,  
ALEX. STEWART,  
EDMUND A. MANSFIELD, } Curragh  
Commissioners.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
46	Peter Buckley	Walshestown	Common of pasture. Right of way across Curragh.	At will, 8a.	Disallowed.
86	Stephen Conlan	Do.	Common of pasture -	Yearly tenant, 30a.	Allowed pasture of sheep in respect of 30.
112	Thomas Dowling	Do.	Common of pasture -	Yearly tenant, 18a. 2r. 3p.	Disallowed.
163	James Fegan	Do.	Common of pasture -	Yearly tenant, 88a.	Allowed pasture of sheep in respect of 88.
171	William Gannon	Do.	Common of pasture -	Yearly tenant, 98a.	Allowed pasture of sheep in respect of 98.
197	Patrick Hanlon	Do.	Common of pasture -	Yearly tenant, 43a.	Disallowed.
323	Christopher Murphy	Do.	Common of pasture -	Yearly tenant, 16a.	Disallowed.
398	Thomas Whyte	Do.	Common of pasture -	Yearly tenant, 73a.	Allowed pasture of sheep in respect of 73.
401	Martin Whelan	Do.	Common of pasture -	Yearly tenant, 18a.	Allowed pasture of sheep in respect of 18.
46	Peter Buckley	Black Ditch	Common of pasture -	Yearly tenant, 115a.	Disallowed.
186	Hans Hendrick	Tully or French Furze	-	-	Withdrawn.
187	Hans Hendrick	Do.	Common of pasture -	In fee, 1,104a. 5r. 34p.	Allowed (in respect of 583a.) pasture of sheep for tenants (claims Nos. 4, 250, 269, 271, 302, 361, 81, 103, 166, 196, 228, and 240) in occupation of claimant's lands, with reversion of said pasture to claimant, not exceeding 583 sheep. Withdrawn.
188	Hans Hendrick	Do.	-	-	Withdrawn.
3	James Bambrick	Do.	Common of pasture -	Tenant at will, cottage and garden	Disallowed.
4	John Beahan	Do.	Common of pasture -	Tenant at will, 10a.	Allowed pasture of sheep in respect of 10.
30	John Bradshaw	Do.	Common of pasture. Compensation for loss of sheep manure.	Cottage; caretaker	Disallowed.
75	Joseph Confrey	Do.	Common of pasture -	Yearly tenant, 38a.	Disallowed.
260	Anne Lennox	Do.	Common of pasture -	At will, 47a.	Allowed pasture of sheep in respect of 47.
267	Michael Lee	Do.	Common of pasture -	Leaseholder, 132a. 2r. 36p.	Withdrawn.
269	William Lee	Do.	Common of pasture -	Leaseholder, 28a. 3r. 23p.	Allowed pasture of sheep in respect of 28.
271	Mathew Lawler	Do.	Common of pasture -	Yearly tenant, 18a.	Allowed pasture of sheep in respect of 18.
303	John Moore	Do.	Common of pasture. Right of way across Curragh.	Leaseholder, 110a. 0r. 30p.	Allowed pasture of sheep in respect of 110.
320	Daniel Murphy	Do.	Common of pasture. Compensation for loss of sheep manure.	At will; cabin	Disallowed.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	—	No. of Sheep allowed.
326	Patrick McDonald -	Tully or French Furze - Do.	Common of pasture. Compensation for loss of sheep manure.	Caretaker, 1a. - - -	Disallowed.	
361	Simon Ryan -	Do.	Common of pasture. Right of way over Curragh.	Leaseholder, 86a. - -	Allowed pasture of sheep in respect of 86a. Right of way disallowed.	86
399	Charles Westlake -	Do.	Common of pasture -	Freehold cottage -	Disallowed.	
81	FitzJames Clancy -	Do.	Common of pasture -	Leaseholder, 12a. 1r. -	Allowed pasture of sheep in respect of 12a.	12
103	John Doyle -	Do.	Common of pasture. Right of exercising horses and way over Curragh.	Yearly tenant, 10a. -	Allowed pasture of sheep in respect of 10a. Remainder of claim disallowed.	10
125	Mathew O'Donoghoe -	Do.	Common of pasture -	At will, house and yard -	Disallowed.	
166	James Fay -	Do.	Common of pasture. Right of way over Curragh.	Leaseholder, 175a. - -	Allowed pasture of sheep in respect of 175a. Right of way disallowed.	175
196	Mary Haulon -	Do.	Common of pasture. Right of hooping wheels and use of gallops.	Leaseholder, 6a. - -	Allowed pasture of sheep in respect of 5a. Remainder of claim disallowed.	5
198	Michael Houlahan -	Do.	Common of pasture. Compensation for loss of sheep manure.	- - -	Disallowed.	
228	Mathew Kelly -	Do.	Common of pasture. Right of way across Curragh.	Yearly tenant, 42a. - -	Allowed pasture of sheep in respect of 42a. Right of way disallowed.	42
240	Laurence Keegan, sen.	Do.	Common of pasture. Right of exercising horses. Right of way over the Curragh.	Leaseholder, 40a. - -	Allowed pasture of sheep in respect of 40a. Remainder of claim disallowed.	40
295	Euphemia Eleonora Hodson, on behalf of herself and of Rev. John Bonham, owner in fee.	Sunny Hill	Common of pasture -	Leaseholder, 240a. - -	Allowed (in respect of 139a.) pasture of sheep for tenants in occupation of claimant's lands (claims Nos. 369 and 395), with reversion of said pasture to claimant, and to the owner in fee, not exceeding 139 sheep.	
296	Elizabeth Moran -	Do.	Common of pasture -	House and garden -	Disallowed.	
369	James Tobin -	Do.	Common of pasture. Right of way from house to public road.	Leaseholder, 9a. 2r. 30p. - -	Allowed pasture of sheep in respect of 9a. Access to public road allowed, as shown by the map before referred to.	9
395	Thomas Walsh -	Do.	Common of pasture -	Leaseholder, 130a. - -	Allowed pasture of sheep in respect of 130a.	130

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
292	John F. Meekings	North and South Glebe, Knock-bounce, and Old Kilcullen.	Common of pasture	In fee, 69a. 3r. 17p.	Disallowed.
126	Thomas Dempsey	Do.	Common of pasture	Leaseholder, 13a. 1r. 39p.	Disallowed.
374	Eather Tougher	Do.	Common of pasture	Leaseholder and yearly tenancy, 8a.	Disallowed.
26	John Brennan	Do.	Common of pasture	Leaseholder, 33a. 3r. 3p.	Disallowed.
368	Patrick Salmon	Old Kilcullen.	Common of pasture. Right of way across the Curragh.	Tenant at will, 4a. 3r.	Disallowed.
121	Rev. Francis Davies	Not mentioned.	-	-	Withdrawn.
119	Joseph Davis	Do.	-	-	Withdrawn.
276	John Mooney	Town of Kildare.	Common of pasture	Freehold, three houses	Disallowed.
61	Denis Casey	Not mentioned.	Common of pasture	Freehold cottage and garden	Disallowed.
51	Mary McCarlin	Not mentioned.	-	-	Withdrawn.
254	His Grace The Duke of Leinster, Marquis of Kildare, and Earl of Offaly.	Maddens-town.	Common of pasture for selves and tenants. Right of way to and from Curragh.	The Duke, tenant for life under settlement of the fee with remainders, 663a.	Allowed (in respect of 285a.) pasture of sheep for tenants (claims Nos. 57, 58, 117, 132, 134, 214, 333, 336, 338) in occupation of claimants' lands, with reversion of said pasture to claimants, not exceeding 235 sheep. Right of way disallowed.
57	Maurice Caffrey	Do.	Common of pasture	Yearly tenant under the Duke of Leinster, 25a.	Allowed pasture of sheep in respect of 25a.
58	Thomas Caffrey	Do.	Common of pasture	Yearly tenant under same, 7a.	Allowed pasture of sheep in respect of 7a.
109	William Dowling	Do.	Common of pasture	Yearly tenant under same, 8a.	Disallowed.
117	Denis Dooney	Do.	Common of pasture	Yearly tenant under same, 17a.	Allowed pasture of sheep in respect of 17a.
132	James Dunney	Do.	Common of pasture	Yearly tenant under same, 37a.	Allowed pasture of sheep in respect of 37a.
133	Michael Doogan	Do.	Common of pasture	Yearly tenant under same, 3a.	Disallowed.
134	Lawrence Doogan	Do.	Common of pasture	Yearly tenant under same, 57a.	Allowed pasture of sheep in respect of 57a.
176	James Graney	Do.	Common of pasture	Yearly tenant under same, 2a. 2r.	Disallowed.
214	Patrick Keane	Do.	Common of pasture	Yearly tenant under same, 60a.	Allowed pasture of sheep in respect of 60a.



No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
333	Richard Newcomen	Maddens-town—cont.	Common of pasture	Yearly tenant under same, 48a. -	48
336	Patrick Owens	Do.	Common of pasture	Yearly tenant under same, 44a. -	43
338	Jane Owens	Do.	Common of pasture	Yearly tenant under same, 11a. -	11
346	Patrick Orford	Do.	Common of pasture	Yearly tenant under same, 109a. -	Disallowed.
60	Thomas Caffrey	Do.	Common of pasture	Tenant at will, 8a. -	Withdrawn.
90	Denis Dooney	Do.	Common of pasture	Tenant at will, 17a. -	Withdrawn in favour of claim 117.
215	Patrick Keane	Do.	Common of pasture. Right of way to and from house and land to Curragh.	Yearly tenant 100a. -	Withdrawn in favour of claim 214.
337	Patrick Owens	Do.	Common of pasture.	Tenant at will, 44a. -	Withdrawn in favour of claim 336.
345	Patrick Orford	Do.	Common of pasture. Passage to and from house to Curragh and adjoining fair and market towns.	135a. -	Withdrawn in favour of claim 346.
368a	John Smith	Do.	Common of pasture. Compensation for loss of gathering sheep manure. Passage across Curragh.	Caretaker to Richard Newcomen, cottage—no land.	Disallowed.
131	James Dunney	Do.	Common of pasture. Passage to and from Curragh to public road.	Yearly tenant, 40a. -	Disallowed.
256	His Grace The Duke of Leinster, Marquis of Kildare, and Earl of Offaly.	Walterstown	Common of pasture for selves and tenants.	The Duke tenant for life, under settlement of the fee with remainders, 40a. -	Disallowed.
153	John Flood	Do.	Common of pasture	Yearly tenant, 40a. -	Disallowed.
259a	His Grace The Duke of Leinster, Marquis of Kildare, Earl of Offaly.	Red Hills	Common of pasture for selves and tenants. Right of way to and from Curragh.	The Duke tenant for life, under settlement of the fee with remainders, 73a. -	Allowed, in respect of 72a., pasturage of sheep, for tenant (claim No. 155) in occupation of claimants' land, with reversion of said pasturage to claimants, not exceeding 72 sheep. Right of way disallowed.
155	William Forbes	Do.	Common of pasture. Right of way to and from the Curragh.	Yearly tenant under the Duke of Leinster, 73a. -	Allowed pasturage of sheep in respect of 72a. Right of way disallowed.
259	Duke of Leinster, Marquis of Kildare, and Earl of Offaly.	Dunmurry	Common of pasture for selves and tenants.	The Duke tenant for life, under settlement of the fee with remainders, 181a. -	Allowed (in respect of 94a.) pasturage of sheep for tenant (claim No. 279) in occupation of claimants' land, with reversion of said pasturage to claimants, not exceeding 94 sheep.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
97	Patrick Dunne	Dunmurry— <i>cont.</i>	Common of pasture	Tenant at will under the Duke of Leinster, 8a. 2r.	
107	Michael Dowling	Do.	Common of pasture	Yearly tenant under same, 141a.	
279	Patrick Murrin	Do.	Common of pasture	Also 28a. at Conlanstown.	
281	James Edw. Medlicott.	Do.	Common of pasture	Yearly tenant under same, 94a.	94
				In fee, 311a.	207
318	Philip Murphy	Do.	Common of pasture	Yearly tenant under J. E. Medlicott, 103a.	45
341	James Owens	Do.	Common of pasture	Cottage occupied as shepherd	
258	Duke of Leinster, Marquis of Kildare, and Earl of Offaly.	Blackmuller's Hill	Common of pasture for selves and tenants. Right of way to and from Curragh.	The Duke tenant for life, under settlement of the fee with remainders, 71a.	
21	Christopher Boyle	Do.	Common of pasture	Yearly tenant under the Duke of Leinster, 6a.	6
244	John Keegan	Do.	Common of pasture	Yearly tenant under same, 44a.	
334	Patrick Nolan	Do.	Common of pasture	Yearly tenant under same, 6a. 1r. 13p.	42
397	Thomas Walsh	Do.	Common of pasture	Yearly tenant under same, 6a.	
253	The Duke of Leinster, Marquis of Kildare, and Earl of Offaly.	Kildare, comprising the town of Kildare, Kildare North, Kildare South, and including the following denominations, viz.: Curragh farm, Whitesland, West and East, Loughanades, South Loughmiane, and Loughmiane.	Common of pasture for selves and tenants. Right of way to and from Curragh.	The Duke, tenant for life under settlement of the fee with remainders, 869a. 3r. 13p.	6
				Allowed pasture of sheep in respect of 11a. (claims Nos. 127 and 146). Allowed (in respect of 204a.) pasture of sheep for tenants (claims Nos. 53, 56, 88, 106, 156, 73, 87, 68, 55a, 404, 242, 303, and 321) in occupation of claimants' lands, herein-after mentioned, with reversion of said pasture to claimants, not exceeding 204 sheep. Right of way disallowed.	11

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	—	No. of Sheep allowed.
7	Simon Beahan	Kildare lands —cont.	Common of pasture. Right of way to and from his land to Curragh.	Yearly tenant under the Duke of Leinster, 1r.	Disallowed.	
53	Daniel Cleary	Do.	Common of pasture. Right of way to and from his land to Curragh.	Yearly tenant under the Duke of Leinster, 23a.	Allowed pasturage of sheep in respect of 23a. Right of way disallowed.	23
56	Henry Carey	Do.	Common of pasture. Right of way to and from his land to Curragh.	Yearly tenant under same, 6a. 2r.	Allowed pasturage of sheep in respect of 6a., with reversion to his landlord, claimant No. 88. Right of way disallowed.	6
88	Alicia Colgan	Do.	Common of pasture. Right of way to and from her land to Curragh.	Yearly tenant under same, 69a. -	Allowed pasturage of sheep in respect of 69a. Right of way disallowed.	69
106	Thomas Doyle	Do.	Common of pasture. Right of way to and from his land to Curragh.	Yearly tenant under same, 12a. 1r. 15p.	Allowed pasturage of sheep in respect of 12a. Right of way disallowed.	12
127	James Dempsey	Do.	Common of pasture. Right of way to and from his land to Curragh.	Yearly tenant under same, 9a. -	Disallowed to claimant; but allowed pasturage of sheep to the owner in fee in respect of 9a. Right of way disallowed.	
138	Mary Fitzgerald	Do.	Common of pasture. Right of way to and from her land to Curragh.	Yearly tenant under same, 1a. -	Withdrawn.	
146	Anne Farrell	Do.	Common of pasture -	Yearly tenant under same, 2a. 2r. 8p.	Disallowed to claimant; but allowed pasturage of sheep to owner in fee in respect of 2a.	
156	Anthony Foran	Do.	Common of pasture -	Yearly tenant under same, 4a. -	Allowed pasturage of sheep in respect of 3a. Withdrawn.	3
159	James Finlay	Do.	Common of pasture. Right of way to and from his land to Curragh.	Yearly tenant under same, 23a. -	Withdrawn.	
236	John Keegan	Do.	Common of pasture -	Cabin - - - -	Disallowed.	
73	James Collins	Do.	Common of pasture -	Yearly tenant under same, 4a. -	Allowed pasturage of sheep in respect of 4a.	4
87	John Colgan	Do.	Common of pasture -	Yearly tenant under same, 6a. -	Allowed pasturage of sheep in respect of 6a.	6
68	Thomas Cooney	Do.	Common of pasture -	Tenant to Alicia Colgan, who holds under the Duke of Leinster, 6a.	Allowed pasturage of sheep in respect of 6a., with reversion to his landlord, claimant No. 88.	6

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
55a	Samuel Chaplin	Kildare lands —cont.	Common of pasture - -	Yearly tenant under the Duke of Leinster, 11a.	11
70	Henry Cooney	Do.	Common of pasture. Right of way to and from his house and land to the Curragh.	Yearly tenant under same, 6a. 0r. 27p.	Withdrawn.
266	Michael Charles Lee	Do.	Common of pasture. Right of way across the Curragh. Compensation for land taken in by Camp.	Leaseholder under the Duke of Leinster, 16a. 2r. 1p.	Withdrawn.
190	James Dempsey	Do.	Common of pasture - -	Tenant at will, 9a.	Withdrawn in favour of claim No. 127.
4	Patrick Bartley	Do.	Common of pasture - -	Yearly tenant under same	Disallowed.
356	Mary Rogers	Do.	Common of pasture. Passage from lands to Camp.	Yearly tenant, 2a.	Withdrawn.
404	George Warren	Do.	Common of pasture. Passage from lands to Curragh.	Yearly tenant under same, 3a.	Allowed pasture of sheep in respect of 2a. Passage disallowed.
242	Laurence Keegan	Do.	Common of pasture. Right of way from lands to Curragh.	Yearly tenant, 47a.	Allowed pasture of sheep in respect of 46a. Right of way disallowed.
264	William Lee	Do.	Common of pasture. Passage across Curragh. Compensation for land and pasturage taken in by Camp.	Tenant at will, 23a. 2r. 23p.	Disallowed.
268	Michael Lee	Do.	Common of pasture. Passage across the Curragh. Compensation for land taken in by Camp.	Yearly tenant, 28a.	Withdrawn.
303	John Moore	Do.	Common of pasture. Passage from land to Curragh.	Yearly tenant, 6a.	Allowed pasture of sheep in respect of 6a. Passage disallowed.
321	Laurence Murphy	Do.	Common of pasture. Right of way from land to Curragh.	Yearly tenant, 11a.	Allowed pasture of sheep in respect of 10a. Right of way disallowed.
265	Michael Charles Lee	Do.	Common of pasture. Passage across the Curragh. Compensation for land taken in by Camp.	Leaseholder, 16a. 2r. 17p. Yearly tenant, 25a. 1r. 23p.	Disallowed.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
2596	His Grace the Duke of Leinster, Marquis of Kildare, and Earl of Offaly.	Mooretown	Common of pasture for selves and tenants.	The Duke, tenant for life under settlement of the fee with remainders, 205a.	Disallowed.
47	Thomas Burke	Do.	Common of pasture -	Yearly tenant, 5a.	Disallowed.
177	Arthur Garry	Do.	Common of pasture -	Yearly tenant, 140a.	Withdrawn.
224	Patrick Kelly	Do.	Common of pasture -	Tenant at will, 85a.	Withdrawn.
305	John Moore	Do.	Common of pasture -	Tenant at will, 19a.	Withdrawn.
373	Thomas Treacey	Do.	Common of pasture -	Tenant at will, 11a.	Withdrawn.
82	Bridget Conlan, and on behalf of the owner in fee.	Do.	Common of pasture -	Yearly tenant under Charles R. Joynt, owner in fee, 45a. 1r. 5p.	Allowed pasture of sheep in respect of 39a.
290	John Frederick Meekings, and on behalf of the owner in fee.	Do.	Common of pasture -	Yearly tenant under Charles R. Joynt, owner in fee, 50a.	Disallowed.
192	John Vincent Horan	Do.	Common of pasture. Right of way.	In fee - - - -	Withdrawn.
255	His Grace the Duke of Leinster, Marquis of Kildare, and Earl of Offaly.	Milltown	Common of pasture for selves and tenants. Right of way to and from Curragh.	The Duke, tenant for life under settlement of the fee with remainders, 222a.	Allowed (in respect of 54a.) pasture of sheep for tenant (claim No. 221) in occupation of claimants' land, with reversion of said pasture to claimants, not exceeding 54 sheep. Right of way disallowed.
221	Richard Kelly	Do.	Common of pasture -	Yearly tenant under the Duke of Leinster, 128a.	Allowed pasture of sheep in respect of 54a.
357	William Ryan	Do.	Common of pasture. Right of way to and from Curragh.	Yearly tenant under same, 39a. -	Withdrawn.
360	Richard Ryan	Do.	Common of pasture. Right of way to and from Curragh.	Yearly tenant under same, 83a. -	Withdrawn.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	No. of Sheep allowed.
252	His Grace the Duke of Leinster, the Marquis of Kildare, and the Earl of Offaly.	Killenagorname.	Common of pasture for selves and tenants. Right of way to and from Curragh.	The Duke, tenant for life under settlement of the fee with remainders, 114a. 2r. 20p.	Allowed (in respect of 113a.) pasturage of sheep for tenants in occupation of claimants' lands (claims Nos. 9, 10, 280), with reversion of said pasturage to claimants, not exceeding 113 sheep. Right of way disallowed.
9	Patrick Beahan	Do.	Common of pasture. Right of way from lands to Curragh.	Yearly tenant under the Duke of Leinster, 15a.	Allowed pasturage of sheep in respect of 15a. Right of way disallowed.
10	Michael Beahan	Do.	Common of pasture. Right of way from lands to Curragh.	Leaseholder under same, 30a.	Allowed pasturage of sheep in respect of 29a. Right of way disallowed.
280	John Millway	Do.	Common of pasture	Yearly tenant under same, 69a. 2r. 20p.	Allowed pasturage of sheep in respect of 69a.
257	Duke of Leinster, Marquis of Kildare, and Earl of Offaly.	Knocknagallia or Whitesland.	Common of pasture for selves and tenants. Right of way to and from Curragh.	The Duke, tenant for life under settlement of the fee with remainders, 176a. 3r. 25p.	Allowed (in respect of 38a.) pasturage of sheep for tenants (claims Nos. 95, 135, and 195) in occupation of claimants' lands, with reversion of said pasturage to claimants, not exceeding 38 sheep. Right of way disallowed.
35	Michael Byrne	Do.	Common of pasture. Right of way to and from Curragh.	Yearly tenant under the Duke of Leinster, 8a. 0r. 4p.	Disallowed.
37	John Byrne	Do.	Common of pasture. Right of way to and from Curragh. Right to train horses on Curragh. Compensation for land taken in by Camp.	Yearly tenant under the Duke of Leinster, 17a.	Disallowed.
52	Daniel Cleary	Do.	Common of pasture	Yearly tenant under same, 21a.	Disallowed.
55	Samuel Chaplin	Do.	Common of pasture	Yearly tenant under same, 7a.	Disallowed.
95	Charles Dunne	Do.	Common of pasture	Yearly tenant under same, 15a.	Allowed pasturage of sheep in respect of 15a.
135	Thomas Darby	Do.	Common of pasture	Yearly tenant under same, 13a.	Allowed pasturage of sheep in respect of 13a.

No. of Claim.	Names of Claimants.	Townlands.	Substance of Rights and Compensation (where any) claimed.	Term, Estate, or Interest, and Number of Acres (Irish) in respect of which Claim made.	—	No. of Sheep allowed.
194	Thomas Heffernan	Knocknagallia or Whitesland —cont.	Common of pasture. Right of way to and from Curragh.	Yearly tenant under same, 10a. -	Withdrawn.	
195	Thomas Heffernan	Do.	Common of pasture -	Tenant at will under same, 10a. -	Allowed pasturage of sheep in respect of 10a.	10
251	His Grace the Duke of Leinster, Marquis of Kildare, and Earl of Offaly.	Pollardstown	Common of pasture for selves and tenants. Right of way to and from Curragh.	The Duke, tenant for life under settlement of the fee with remainder, 546a. 3r. 94p.	Allowed (in respect of 522a.) pasturage of sheep for tenants (claims Nos. 86, 84, 139, 190, 200, and 286) in occupation of claimants' lands, with reversion of said pasturage to claimants, not exceeding 522 sheep. Right of way disallowed.	
36	Michael Byrne	Do.	Common of pasture. Right of way.	Yearly tenant under the Duke of Leinster, 1a. 0r. 37p.	Allowed pasturage of sheep in respect of 1a. Right of way disallowed.	1
84	Edward Conlan	Do.	Common of pasture. Right of way.	Yearly tenant under same, 181a.	181a. Right of way disallowed.	181
139	Thomas Fitzgerald	Do.	Common of pasture. Right of way.	Yearly tenant under same, 164a.	139a. Right of way disallowed.	139
190	Patrick Healy	Do.	Common of pasture. Right of way.	Yearly tenant under same, 122a.	Allowed pasturage of sheep in respect of 100a. Right of way disallowed.	100
200	John Hooney	Do.	Common of pasture. Right of way.	Yearly tenant under same, 124a.	100a. Right of way disallowed.	100
243	Phelim Keegan	Do.	Common of pasture -	Part in fee, part yearly tenancy under the Duke of Leinster, 2a.	Disallowed.	
286	The Rev. Warren Cecil Maunsell.	Do.	Common of pasture -	Tenant for life as Rector of Glebe-lands, 1a. 2r. 29p.	Allowed pasturage of sheep in respect of 1a.	1
301	John Moore	Do.	Common of pasture. Compensation for loss of collecting sheep manure and depositing it on Curragh.	Freehold cottage and 3r. - -	Disallowed.	

HENRY H. JOY,  
ALEX. STEWART,  
EDMUND A. MANSFIELD, } Curragh  
Commissioners.

30th June 1869.

## SECOND SCHEDULE.

## PUBLIC ROADS NOW EXISTING OVER THE CURRAGH.

- |   |   |
|---|---|
| <p>No. 1. Road known as the Limerick Road.</p> <p>No. 2. Road from Ballymannny by the Stand House and Anglesea post, by Ducie's stables to the Shrod Road.</p> <p>No. 3. Road from Ballymannny by the Curragh Petty Sessions Court to Athgarvan.</p> <p>No. 4. Road from Donnelly's Hollow to a point near the present post office at Ballysax.</p> <p>No. 5. Road from the Kilcullen Road at Ballysax, past Ballysax Glebe to Kildare Road at French Furze.</p> <p>No. 6. Road from Ballyshannon Road at Brownstown up to Road No. 5.</p> <p>No. 7. Road from the corner of Whitehall to Road No. 5.</p> <p>No. 8. Road from Blackmiller's Hill to Rathbride.</p> <p>No. 9. Road from Blackmiller's Hill to edge of Curragh at Rossmore Lodge.</p> <p>No. 10. Road from Keegan's House at Blackmiller's Hill to join Road No. 8.</p> | <p>No. 11. Road leading from Rathangan Road across the railway bridge to Road No. 2, near the Anglesea post.</p> <p>No. 12. Road from Pollardstown bridge to Road No. 2.</p> <p>No. 13. Road from the Newbridge Road, past the National School, to Road No. 3.</p> <p>No. 14. Road from the road leading to Ballysax Church to Road No. 5.</p> <p>No. 15. Public right of way on, over, and along the road crossing the site of the camp marked on the deposited map, and thereon distinguished by the letters "X Y," subject to the provisions in the 8th section of the Curragh of Kildare Act, 1868.</p> |
|---|---|

30th June 1869.

<p>HENRY H. JOY, ALEXANDER STEWART, EDMUND A. MANSFIELD,</p>	}	Curragh Commissioners.
--	---	---------------------------

## CHAP. 75.

*The Elementary Education Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

*Preliminary.*

1. *Short title.*
2. *Extent of Act.*
3. *Definition of terms.*

## (1.) LOCAL PROVISION FOR SCHOOLS.

4. *School districts, &c. in schedule.*

*Supply of Schools.*

5. *School district to have sufficient public schools.*
6. *Supply of schools in case of deficiency.*
7. *Regulations for conduct of public elementary school.*

*Proceedings for Supply of Schools.*

8. *Determination by Education Department of deficiency of public school accommodation.*
9. *Notice by Education Department of public school accommodation required.*
10. *Formation of school board and requisition to provide schools.*
11. *Proceedings on default of school board.*
12. *Formation of school boards without inquiry upon application.*
13. *Proceedings by Education Department after the first year.*



*Management and Maintenance of Schools by School Board.*

14. *Management of school by school board.*
15. *Appointment of managers by school board.*
16. *Neglect by board of regulations of public elementary schools.*
17. *Fees of children.*
18. *Maintenance by school board of schools and sufficient school accommodation.*
19. *Powers of school board for providing schools.*
20. *Compulsory purchase of sites. Regulations as to the purchase of land compulsorily. Publication of notices. Service of notices. Petition to Education Department. No order valid until confirmed by Parliament. Costs how to be defrayed.*
21. *Purchase of land by managers of public elementary school.*
22. *Sale or lease of school-house.*
23. *Managers may transfer school to school board.*
24. *Re-transfer of school by school board to managers.*

*Miscellaneous Powers of School Board.*

25. *Payment of school fees.*
26. *Establishment of free school in special cases.*
27. *Contribution to industrial schools.*
28. *Establishment of industrial school.*

*Constitution of School Boards.*

29. *School board.*
30. *Constitution of school board.*
31. *Election of school board.*
32. *Non-election, &c. of school board.*
33. *Determination of disputes as to the election of school boards.*
34. *Disqualification of member of board.*
35. *Appointment of officers.*
36. *Officer to enforce attendance at school.*

*School Board in Metropolis.*

37. *School board in metropolis.*
38. *Payment of chairman.*
39. *Alteration of number of members.*

*United School Districts.*

40. *Formation by Education Department of united districts.*
41. *Conditions of formation of district.*
42. *As to dissolution of united school district.*
43. *Public inquiry as to united district in future.*
44. *Order to be evidence of formation or dissolution.*
45. *Constitution of school board in united school district.*
46. *Election of school board in united school district.*
47. *Arrangements on formation of united district.*
48. *As to small parishes.*

*Contributory Districts.*

49. *Contributory district.*
50. *Election of members by contributory district.*
51. *Notices and public inquiry as to contributory district.*
52. *Combination of school boards.*

*Expenses.*

53. *School fund of school board.*
54. *Deficiency of school fund raised out of rates.*
55. *Apportionment of school fund in united and contributory district.*
56. *Remedy of school board on default of rating authority, &c.*
57. *Borrowing by school board.*
58. *Borrowing by school board for London.*

*Accounts and Audit.*

- 59. *Accounts to be made up and examined.*
- 60. *Audit of accounts.*
- 61. *Penalty for improper payment of surcharge.*
- 62. *Publication of accounts.*

*Defaulting School Board.*

- 63. *Proceedings on default by school board.*
- 64. *Certificate of Education Department as to appointment, expenses, and loans.*
- 65. *Expenses incurred on default.*
- 66. *Dissolution of school boards.*

*Returns and Inquiry.*

- 67. *Returns by local authority.*
- 68. *Mode of obtaining returns.*
- 69. *Local authority to make returns.*
- 70. *Proceedings on default of authority to make returns.*
- 71. *Inquiry by inspectors of Education Department.*
- 72. *Refusal to fill up forms and to admit inspectors.*

*Public Inquiry.*

- 73. *Public inquiry.*

*Attendance at School.*

- 74. *As to attendance of children at school.*

*Miscellaneous.*

- 75. *Application of small endowments.*
- 76. *Inspection of voluntary schools by inspector not one of Her Majesty's inspectors.*
- 77. *Parish divided by boundaries of boroughs.*
- 78. *Education Department may apply to Charity Commissioners under 16 & 17 Vict. c. 137., &c.*
- 79. *Ascertaining rateable value.*
- 80. *Mode of publication of notices.*
- 81. *Notices may be served by post.*
- 82. *Notices to and by school board.*
- 83. *Evidence of orders, &c. of Education Department.*
- 84. *Effect of requisitions of Education Department.*
- 85. *Appearance of school board.*
- 86. *Tenure of teacher and his removal from house under sects. 17 and 18 of 4 & 5 Vict. c. 38.*
- 87. *Ratepayer may inspect books, &c. of school board.*
- 88. *Penalty for making incorrect return.*
- 89. *Penalty on personation of voter.*
- 90. *Penalty for forging or falsifying any voting paper or obstructing the election.*
- 91. *Corrupt practices.*
- 92. *Recovery of penalties.*
- 93. *Provision as to Oxford.*
- 94. *Effect of schedules.*
- 95. *Returns by school board.*

**(II.) PARLIAMENTARY GRANT.**

- 96. *Parliamentary grant to public elementary school only.*
- 97. *Conditions of annual parliamentary grant.*
- 98. *Refusal of grant to unnecessary schools.*
- 99. *Power of schools to take parliamentary grants.*

*Report.*

- 100. *Annual report of Education Department.*  
*Schedules.*

**An Act to provide for public Elementary Education in England and Wales.**  
(9th August 1870.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

*Preliminary.*

1. This Act may be cited as "The Elementary Education Act, 1870."

2. This Act shall not extend to Scotland or Ireland.

3. In this Act—

The term "metropolis" means the places for the time being within the jurisdiction of the Metropolitan Board of Works under the Metropolis Management Act, 1855:

The term "borough" means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and the Acts amending the same:

The term "parish" means a place for which for the time being a separate poor rate is or can be made:

The term "person" includes a body corporate: The term "Education Department" means "the Lords of the Committee of the Privy Council on Education:"

The term "Her Majesty's inspectors" means the inspectors of schools appointed by Her Majesty on the recommendation of the Education Department:

The term "managers" includes all persons who have the management of any elementary school, whether the legal interest in the schoolhouse is or is not vested in them:

The term "teacher" includes assistant teacher, pupil teacher, sewing mistress, and every person who forms part of the educational staff of a school:

The term "parent" includes guardian and every person who is liable to maintain or has the actual custody of any child:

The term "elementary school" means a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of the instruction, from each scholar, exceed ninepence a week:

The term "schoolhouse" includes the teacher's dwelling house, and the playground (if any) and the offices and all premises belonging to or required for a school:

The term "vestry" means the ratepayers of a parish meeting in vestry according to law:

The term "ratepayer" includes every person who, under the provisions of the Poor Rate Assessment and Collection Act, 1869, is deemed to be duly rated:

The term "parliamentary grant" means a grant made in aid of an elementary school, either annually or otherwise, out of moneys provided by Parliament for the civil service, intituled 'For public education in Great Britain.'

(I.) LOCAL PROVISION FOR SCHOOLS.

4. For the purposes of this Act, the respective districts, boards, rates, and funds, and authorities described in the first schedule to this Act shall be the school district, the school board, the local rate and the rating authority.

*Supply of Schools.*

5. There shall be provided for every school district a sufficient amount of accommodation in public elementary schools (as herein-after defined) available for all the children resident in such district for whose elementary education efficient and suitable provision is not otherwise made, and where there is an insufficient amount of such accommodation, in this Act referred to as "public school accommodation," the deficiency shall be supplied in manner provided by this Act.

6. Where the Education Department, in the manner provided by this Act, are satisfied and have given public notice that there is an insufficient amount of public school accommodation for any school district, and the deficiency is not supplied as herein-after required, a school board shall be formed for such district and shall supply such deficiency, and in case of default by the school board the Education Department shall cause the duty of such board to be performed in manner provided by this Act.

7. Every elementary school which is conducted in accordance with the following regulations shall be a public elementary school within the meaning of this Act; and every public elementary school shall be conducted in accordance with the following regulations (a copy of which regulations shall be conspicuously put up in every such school); namely,

(1.) It shall not be required, as a condition of any child being admitted into or continuing in the school, that he shall attend or abstain from attending any Sunday school, or any place of religious worship, or that

he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere, from which observance or instruction he may be withdrawn by his parent, or that he shall, if withdrawn by his parent, attend the school on any day exclusively set apart for religious observance by the religious body to which his parent belongs :

- (2.) The time or times during which any religious observance is practised or instruction in religious subjects is given at any meeting of the school shall be either at the beginning or at the end or at the beginning and the end of such meeting, and shall be inserted in a time table to be approved by the Education Department, and to be kept permanently and conspicuously affixed in every schoolroom ; and any scholar may be withdrawn by his parent from such observance or instruction without forfeiting any of the other benefits of the school :
- (3.) The school shall be open at all times to the inspection of any of Her Majesty's inspectors, so, however, that it shall be no part of the duties of such inspector to inquire into any instruction in religious subjects given at such school, or to examine any scholar therein in religious knowledge or in any religious subject or book :
- (4.) The school shall be conducted in accordance with the conditions required to be fulfilled by an elementary school in order to obtain an annual parliamentary grant.

*Proceedings for Supply of Schools.*

8. For the purpose of determining with respect to every school district the amount of public school accommodation, if any, required for such district, the Education Department shall, immediately after the passing of this Act, cause such returns to be made as in this Act mentioned, and on receiving those returns, and after such inquiry, if any, as they think necessary, shall consider whether any and what public school accommodation is required for such district, and in so doing they shall take into consideration every school, whether public elementary or not, and whether actually situated in the school district or not, which in their opinion gives, or will when completed give, efficient elementary education to, and is, or will when completed be, suitable for the children of such district.

9. The Education Department shall publish a notice of their decision as to the public school accommodation for any school district, setting forth with respect to such district the description thereof, the number, size, and description of the

schools (if any) available for such district, which the Education Department have taken into consideration as above mentioned, and the amount and description of the public school accommodation, if any, which appears to them to be required for the district, and any other particulars which the Education Department think expedient.

If any persons being either—

- (1.) Ratepayers of the district, not less than ten, or if less than ten being rated to the poor rate upon a rateable value of not less than one third of the whole rateable value of the district, or,
- (2.) The managers of any elementary school in the district,

feel aggrieved by such decision, such persons may, within one month after the publication of the notice, apply in writing to the Education Department for and the Education Department shall direct the holding of a public inquiry in manner provided by this Act.

At any time after the expiration of such month, if no public inquiry is directed, or after the receipt of the report made after such inquiry, as the case may be, the Education Department may, if they think that the amount of public school accommodation for the district is insufficient, publish a final notice stating the same particulars as were contained in the former notice, with such modifications (if any) as they think fit to make, and directing that the public school accommodation therein mentioned as required be supplied.

10. If after the expiration of a time, not exceeding six months, to be limited by the final notice, the Education Department are satisfied that all the public school accommodation required by the final notice to be supplied has not been so supplied, nor is in course of being supplied with due despatch, the Education Department shall cause a school board to be formed for the district as provided in this Act, and shall send a requisition to the school board so formed requiring them to take proceedings forthwith for supplying the public school accommodation mentioned in the requisition, and the school board shall supply the same accordingly.

11. If the school board fail to comply with the requisition within twelve months after the sending of such requisition in manner aforesaid, they shall be deemed to be in default, and if the Education Department are satisfied that such board are in default they may proceed in manner directed by this Act with respect to a school board in default.

12. In the following cases, (that is to say,)

- (1.) Where application is made to the Education Department with respect to any school

district by the persons who, if there were a school board in that district, would elect the school board, or with respect to any borough, by the council:

- (2.) Where the Education Department are satisfied that the managers of any elementary school in any school district are unable or unwilling any longer to maintain such school, and that if the school is discontinued the amount of public school accommodation for such district will be insufficient,

the Education Department may, if they think fit, without making the inquiry or publishing the notices required by this Act before the formation of a school board, but after such inquiry, public or other, and such notice as the Education Department think sufficient, cause a school board to be formed for such district, and send a requisition to such school board in the same manner in all respects as if they had published a final notice.

An application for the purposes of this section may be made by a resolution passed by the said electing body after notice published at least a week previously, or by the Council, and the provisions of the second part of the second schedule to this Act with respect to the passing of such resolution shall be observed.

13. After the receipt of any returns under this Act subsequently to the first with respect to any school district, and after such inquiry as the Education Department think necessary, the Education Department shall consider whether any and what public school accommodation is required in such district, in the same manner as in the case of the first returns under this Act, and where in such district there is no school board acting under this Act they may issue notices and take proceedings in the same manner as they may after the receipt of the first returns under this Act, and where there is a school board in such district they shall proceed in manner directed by this Act.

*Management and Maintenance of Schools by School Board.*

14. Every school provided by a school board shall be conducted under the control and management of such board in accordance with the following regulations:

- (1.) The school shall be a public elementary school within the meaning of this Act:
- (2.) No religious catechism or religious formula which is distinctive of any particular denomination shall be taught in the school.

15. The school board may, if they think fit, from time to time delegate any of their powers under this Act except the power of raising money,

and in particular may delegate the control and management of any school provided by them, with or without any conditions or restrictions, to a body of managers appointed by them, consisting of not less than three persons.

The school board may from time to time remove all or any of such managers, and within the limits allowed by this section add to or diminish the number of or otherwise alter the constitution or powers of any body of managers, formed by it under this section.

Any manager appointed under this section may resign on giving written notice to the board. The rules contained in the third schedule to this Act respecting the proceedings of bodies of managers appointed by a school board shall be observed.

16. If the school board do or permit any act in contravention of or fail to comply with the regulations according to which a school provided by them is required by this Act to be conducted, the Education Department may declare the school board to be and such board shall accordingly be deemed to be a board in default, and the Education Department may proceed accordingly, and every act or omission of any member of the school board, or manager appointed by them, or any person under the control of the board, shall be deemed to be permitted by the board, unless the contrary be proved.

If any dispute arises as to whether the school board have done or permitted any act in contravention of or have failed to comply with the said regulations, the matter shall be referred to the Education Department, whose decision thereon shall be final.

17. Every child attending a school provided by any school board shall pay such weekly fee as may be prescribed by the school board, with the consent of the Education Department, but the school board may from time to time, for a renewable period not exceeding six months, remit the whole or any part of such fee in the case of any child when they are of opinion that the parent of such child is unable from poverty to pay the same, but such remission shall not be deemed to be parochial relief given to such parent.

18. The school board shall maintain and keep efficient every school provided by such board, and shall from time to time provide such additional school accommodation as is, in their opinion, necessary in order to supply a sufficient amount of public school accommodation for their district.

A school board may discontinue any school provided by them, or change the site of any such school, if they satisfy the Education Department

that the school to be discontinued is unnecessary, or that such change of site is expedient.

If at any time the Education Department are satisfied that a school board have failed to perform their duty, either by not maintaining or keeping efficient every school provided by them, or by not providing such additional school accommodation as in the opinion of the Education Department is necessary in order to supply a sufficient amount of public school accommodation in their district, the Education Department may send them a requisition requiring them to fulfil the duty which may have so failed to perform; and if the school board fail within the time limited by such requisition, not being less than three months, to comply therewith to the satisfaction of the Education Department, such board shall be deemed to be a school board in default, and the Education Department may proceed accordingly.

19. Every school board for the purpose of providing sufficient public school accommodation for their district, whether in obedience to any requisition or not, may provide, by building or otherwise, schoolhouses properly fitted up, and improve, enlarge, and fit up any schoolhouse provided by them, and supply school apparatus and everything necessary for the efficiency of the schools provided by them, and purchase and take on lease any land, and any right over land, or may exercise any of such powers.

20. With respect to the purchase of land by school boards for the purposes of this Act the following provisions shall have effect; (that is to say,)

(1.) The Lands Clauses Consolidation Act, 1845, and the Acts amending the same, shall be incorporated with this Act, except the provisions relating to access to the special Act; and in construing those Acts for the purposes of this section the special Act shall be construed to mean this Act, and the promoters of the undertaking shall be construed to mean the school board, and land shall be construed to include any right over land:

(2.) The school board, before putting in force any of the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, shall—

(a.) Publish during three consecutive weeks in the months of October and November, or either of them, a notice describing shortly the object for which the land is proposed to be taken, naming a place where a plan of the land proposed to be taken may be seen at all reasonable hours, and stating the quantity of land that they require; and shall further,

(b.) After such publication, serve a notice in manner mentioned in this section on every owner or reputed owner, lessee or reputed lessee, and occupier of such land, defining in each case the particular land intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such land;

(c.) Such notice shall be served—

(a.) By delivery of the same personally on the person required to be served, or, if such person is absent abroad, to his agent; or

(b.) By leaving the same at the usual or last known place of abode of such person as aforesaid, or by forwarding the same by post in a registered letter, addressed to the usual or last known place of abode of such person:

(3.) Upon compliance with the provisions contained in this section with respect to notices the school board may, if they think fit, present a petition under their seal to the Education Department, praying that an order may be made authorising the school board to put in force the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, so far as regards the land therein mentioned; the petition shall state the land intended to be taken and the purposes for which it is required, and the names of the owners, lessees, and occupiers of land who have assented, dissented, or are neuter in respect of the taking of such land, or who have returned no answer to the notice, and shall be supported by such evidence as the Education Department may from time to time require:

(4.) If, on consideration of the petition and proof of the publication and service of the proper notices, the Education Department think fit to proceed with the case, they may, if they think fit, appoint some person to inquire in the district in which the land is situate respecting the propriety of the proposed order, and also direct such person to hold a public inquiry:

(5.) After such consideration and proof, and after receiving a report made upon any such inquiry, the Education Department may make the order prayed for, authorising the school board to put in force with reference to the land referred to in such order the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, or any of them, and either absolutely or

with such conditions and modifications as they may think fit, and it shall be the duty of the school board to serve a copy of any order so made in the manner and upon the persons in which and upon whom notices in respect of the land to which the order relates are required by this Act to be served :

- (6.) No order so made shall be of any validity unless the same has been confirmed by Act of Parliament; and it shall be lawful for the Education Department, as soon as conveniently may be, to obtain such confirmation, and the Act confirming such order shall be deemed to be a public general Act of Parliament :
- (7.) The Education Department, in case of their refusing or modifying such order, may make such order as they think fit for the allowance of the costs, charges, and expenses of any person whose land is proposed to be taken of and incident to such application and inquiry respectively :
- (8.) All costs, charges, and expenses incurred by the Education Department in relation to any order under this section shall, to such amount as the Commissioners of Her Majesty's Treasury think proper to direct, and all costs, charges, and expenses of any person which shall be so allowed by the Education Department as aforesaid shall, become a charge upon the school fund of the district to which such order relates, and be repaid to the said Commissioners of Her Majesty's Treasury or to such person respectively, by annual instalments not exceeding five, together with interest after the yearly rate of five pounds in the hundred, to be computed from the date of any such direction of the said Commissioners, or allowance of such costs, charges, and expenses respectively, upon so much of the principal sum due in respect of the said costs, charges, and expenses as may from time to time remain unpaid.

The School Sites Acts as defined in the fourth schedule to this Act shall apply in the same manner as if the school board were trustees or managers of a school within the meaning of those Acts, and land may be acquired under any of the Acts mentioned in this section, or partly under one and partly under another Act.

21. For the purpose of the purchase by the managers of any public elementary school of a schoolhouse for such school, or a site for the same, "The Lands Clauses Consolidation Act, 1845," and the Acts amending the same, (except so much as relates to the purchase of land otherwise than by agreement,) shall be incorporated

with this Act; and in construing those Acts for the purposes of this section the special Act shall be construed to mean this Act, and the promoters of the undertaking shall be construed to mean such managers, and land shall be construed to include any right over land.

The conveyance of any land so purchased may be in the form prescribed by the School Sites Acts, or any of them, with this modification, that the conveyance shall express that the land shall be held upon trust for the purposes of a public elementary school within the meaning of this Act, or some one of such purposes which may be specified, and for no other purpose whatever.

Land may be acquired under the Acts incorporated with this section, or under the School Sites Acts, or any of them, or partly under one and partly under another Act.

Any persons desirous of establishing a public elementary school shall be deemed to be managers for the purpose of this section if they obtain the approval of the Education Department to the establishment of such school.

22. The provisions of the Charitable Trusts Acts, 1853 to 1869, which relate to the sale, leasing, and exchange of lands belonging to any charity, shall extend to the sale, leasing, and exchange of the whole or any part of any land or schoolhouse belonging to a school board which may not be required by such board, with this modification, that the Education Department shall for the purposes of this section be deemed to be substituted in those Acts for the Charity Commissioners.

23. The managers of any elementary school in the district of a school board may, in manner provided by this Act, make an arrangement with the school board for transferring their school to such school board, and the school board may assent to such arrangement.

An arrangement under this section may be made by the managers by a resolution or other act as follows; (that is to say.)

- (1.) Where there is any instrument declaring the trusts of the school, and such instrument provides any manner in which or any assent with which a resolution or act binding the managers is to be passed or done, then in accordance with the provisions of such instrument :
- (2.) Where there is no such instrument, or such instrument contains no such provisions, then in the manner and with the assent, if any, in and with which it may be shown to the Education Department to have been usual for a resolution or act binding such managers to be passed or done :

- (3.) If no manner or assent can be shown to have been usual, then by a resolution passed by a majority of not less than two thirds of those members of their body who are present at a meeting of the body summoned for the purpose, and vote on the question, and with the assent of any other person whose assent under the circumstances appears to the Education Department to be requisite.

And in every case such arrangement shall be made only—

- (1.) With the consent of the Education Department; and,  
 (2.) If there are annual subscribers to such school, with the consent of a majority, not being less than two thirds in number, of those of the annual subscribers who are present at a meeting duly summoned for the purpose, and vote on the question.

Provided that where there is any instrument declaring the trusts of the school, and such instrument contains any provision for the alienation of the school by any persons or in any manner or subject to any consent, any arrangement under this section shall be made by the persons in the manner and with the consent so provided.

Where it appears to the Education Department that there is any trustee of the school who is not a manager, they shall cause the managers to serve on such trustee, if his name and address are known, such notice as the Education Department think sufficient; and the Education Department shall consider and have due regard to any objections and representations he may make respecting the proposed transfer.

The Education Department shall consider and have due regard to any objections and representations respecting the proposed transfer which may be made by any person who has contributed to the establishment of such school.

After the expiration of six months from the date of transfer the consent of the Education Department shall be conclusive evidence that the arrangement has been made in conformity with this section.

An arrangement under this section may provide for the absolute conveyance to the school board of all the interest in the schoolhouse possessed by the managers or by any person who is trustee for them or for the school, or for the lease of the same, with or without any restrictions, and either at a nominal rent or otherwise, to the school board, or for the use by the school board of the schoolhouse during part of the week, and for the use of the same by the managers or some other person during the remainder of the week, or for any arrangement that may be agreed on. The arrangement may also provide for the transfer or application of any endowment belonging to

the school, or for the school board undertaking to discharge any debt charged on the school not exceeding the value of the interest in the schoolhouse or endowment transferred to them.

When an arrangement is made under this section the managers may, whether the legal interest in the schoolhouse or endowment is vested in them or in some person as trustee for them or the school, convey to the school board all such interest in the schoolhouse and endowment as is vested in them or in such trustee, or such smaller interest as may be required under the arrangement.

Nothing in this section shall authorise the managers to transfer any property which is not vested in them, or a trustee for them, or held in trust for the school; and where any person has any right given him by the trusts of the school to use the school for any particular purpose independently of such managers, nothing in this section shall authorise any interference with such right except with the consent of such person.

Every school so transferred shall, to such extent and during such times as the school board have under such arrangement any control over the school, be deemed to be a school provided by the school board.

24. Where any school or any interest therein has been transferred by the managers thereof to the school board of any school district in pursuance of this Act, the school board of such district may, by a resolution passed as hereinafter mentioned, and with the consent of the Education Department, re-transfer such school or such interest therein to a body of managers qualified to hold the same under the trusts of the school as they existed before such transfer to the school board, and upon such re-transfer may convey all the interest in the schoolhouse and in any endowment belonging to the school vested in the school board.

A resolution for the purpose of this section may be passed by a majority of not less than two thirds of those members of the school board who are present at a meeting duly convened for the purpose, and vote on the question.

The Education Department shall not give their consent to any such re-transfer unless they are satisfied that any money expended upon such school out of a loan raised by the school board of such district has been or will on the completion of the re-transfer be repaid to the school board.

Every school so re-transferred shall cease to be a school provided by a school board, and shall be held upon the same trusts on which it was held before it was transferred to the school board.

#### *Miscellaneous Powers of School Board.*

25. The school board may, if they think fit, from time to time, for a renewable period not ex-



ceeding six months, pay the whole or any part of the school fees payable at any public elementary school by any child resident in their district whose parent is in their opinion unable from poverty to pay the same; but no such payment shall be made or refused on condition of the child attending any public elementary school other than such as may be selected by the parent; and such payment shall not be deemed to be parochial relief given to such parent.

26. If a school board satisfy the Education Department that, on the ground of the poverty of the inhabitants of any place in their district, it is expedient for the interests of education to provide a school at which no fees shall be required from the scholars, the board may, subject to such rules and conditions as the Education Department may prescribe, provide such school, and may admit scholars to such school without requiring any fee.

27. A school board shall have the same powers of contributing money in the case of an industrial school as is given to a prison authority by section twelve of "The Industrial Schools Act, 1866;" and upon the election of a school board in a borough the council of that borough shall cease to have power to contribute under that section.

28. A school board may, with the consent of the Education Department, establish, build, and maintain a certified industrial school within the meaning of the Industrial Schools Act, 1866, and shall for that purpose have the same powers as they have for the purpose of providing sufficient school accommodation for their district: Provided that the school board, so far as regards any such industrial school, shall be subject to the jurisdiction of one of Her Majesty's Principal Secretaries of State in the same manner as the managers of any other industrial school are subject, and such school shall be subject to the provisions of the said Act, and not of this Act.

#### *Constitution of School Boards.*

29. The school board shall be elected in manner provided by this Act,—in a borough by the persons whose names are on the burgess roll of such borough for the time being in force, and in a parish not situate in the metropolis by the ratepayers.

At every such election every voter shall be entitled to a number of votes equal to the number of the members of the school board to be elected, and may give all such votes to one candidate, or may distribute them among the candidates, as he thinks fit.

The school board in the metropolis shall be elected in manner herein-after provided by this Act.

30. With respect to the constitution of a school board the following provisions shall have effect:

- (1.) The school board shall be a body corporate, by the name of the school board of the district to which they belong, having a perpetual succession and a common seal, with power to acquire and hold land for the purposes of this Act without any licence in mortmain:
- (2.) No act or proceeding of the school board shall be questioned on account of any vacancy or vacancies in their body:
- (3.) No disqualification of or defect in the election of any persons or person acting as members or member of the school board shall be deemed to vitiate any proceedings of such board in which they or he have taken part, in cases where the majority of members parties to such proceedings were duly entitled to act:
- (4.) Any minute made of proceedings at meetings of the school board, if signed by any person purporting to be the chairman of the board, either at the meeting of the board at which such proceedings took place or at the next ensuing meeting of the board, shall be receivable in evidence in all legal proceedings without further proof, and until the contrary is proved every meeting of the school board, in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified to act:
- (5.) The members of a school board may apply any money in their hands for the purpose of indemnifying themselves against any law costs or damages which they may incur in or in consequence of the execution of the powers granted to them:
- (6.) The rules contained in the third schedule to this Act with respect to the proceedings of school boards, and the other matters therein contained, shall be observed.

31. With respect to the election under this Act of a school board, except in the metropolis, the following provisions shall have effect:

- (1.) The number of members of a school board shall be such number, not less than five nor more than fifteen, as may be determined in the first instance by the Education Department, and afterwards from time to time by a resolution of the school board approved by the Education Department:
- (2.) The regulations contained in the second schedule to this Act with respect to the election and retirement of the members of the school board, and the other matters

therein contained, shall be of the same force as if they were enacted as part of this section :

- (3.) The Education Department may, at any time after the date at which they are authorised under this Act to cause a school board to be formed, send a requisition to the mayor or other officer or officers who have power to take proceedings for holding the election requiring him or them to take such proceedings, and the mayor or other officer or officers shall comply with such requisition; and in case of default some person appointed by the Education Department may take such proceedings, and shall have for that purpose the same powers as the person in default.

32. If from any cause in any school district the school board either are not elected at the time fixed for the first election, or at any time cease to be in existence, or to be of sufficient number to form a quorum by reason of non-election, resignation, or otherwise, or neglect or refuse to act, the Education Department may proceed in the same manner as if there were a school board acting in such district, and that board were a board in default.

33. In case any question arises as to the right of any person to act as a member of a school board under this Act, the Education Department may, if they think fit, inquire into the circumstances of the case, and make such order as they deem just for determining the question, and such order shall be final unless removed by writ of certiorari during the term next after the making of such order.

34. No member of a school board, and no manager appointed by them, shall hold or accept any place of profit the appointment to which is vested in the school board or in any managers appointed by them, nor shall in any way share or be concerned in the profits of any bargain or contract with or any work done under the authority of such school board or managers appointed by them: Provided that this section shall not apply to—

- (1.) Any sale of land or loan of money to a school board; or,
  - (2.) Any bargain or contract made with or work done by a company in which such member holds shares;
  - (3.) The insertion of any advertisement relating to the affairs of any such school board in any newspaper in which such member has a share or interest,
- if he does not vote with respect to such sale, loan, bargain, contract, work, or insertion.

Any person who acts in contravention of this section shall be liable, on summary conviction, to a penalty not exceeding fifty pounds, and the said place of profit and his office as member or manager shall be vacant.

35. A school board may appoint a clerk and a treasurer and other necessary officers, including the teachers required for any school provided by such board, to hold office during the pleasure of the board, and may assign them such salaries or remuneration (if any) as they think fit, and may from time to time remove any of such officers; but no such appointment shall be made, except at the first meeting of such board, unless notice in writing has been sent to every member of the board.

Two or more school boards may arrange for the appointment of the same person to be an officer to both or all such boards.

Such officers shall perform such duties as may be assigned to them by the board or boards who appoint them.

36. Every school board may, if they think fit, appoint an officer or officers to enforce any bye-laws under this Act with reference to the attendance of children at school, and to bring children who are liable under the Industrial Schools Act, 1866, to be sent to a certified industrial school before two justices in order to their being so sent, and any expenses incurred under this section may be paid out of the school fund.

#### *School Board in Metropolis.*

37. The provisions of this Act with respect to the formation and the election of school boards in boroughs and parishes shall not extend to the metropolis; and with respect to a school board in the metropolis the following provisions shall have effect:

- (1.) The school board shall consist of such number of members elected by the divisions specified in the fifth schedule to this Act as the Education Department may by order fix:
- (2.) The Education Department, as soon as may be after the passing of this Act, shall by order determine the boundaries of the said divisions for the purposes of this Act, and the number of members to be elected by each such division:
- (3.) The provisions of this Act with respect to the constitution of the school board shall extend to the constitution of the school board under this section, and the name of the school board shall be the School Board for London:
- (4.) The first election of the school board shall take place on such day, as soon as may be after the passing of this Act, as the Educa-

tion Department may appoint, and subsequent elections shall take place in the month of November every third year on the day from time to time appointed by the school board :

- (5.) At every election for each division every voter shall be entitled to a number of votes equal to the number of the members of the school board to be elected for such division, and may give all such votes to one candidate, or may distribute them among the candidates, as he thinks fit :
- (6.) Subject to the provisions contained in this section and in any order made by the Education Department under the power contained in the second schedule to this Act, the members of the board shall, in the city of London, be elected by the same persons and in like manner as common councilmen are elected, and in the other divisions of the metropolis shall be elected by the same persons and in the same manner as vestrymen under The Metropolis Management Act, 1855, and the Acts amending the same ; and, subject as aforesaid, the Acts relating to the election of common councilmen, and sections fourteen to nineteen, and twenty-one to twenty-seven, all inclusive, of The Metropolis Management Act, 1855, and section thirty-six of The Metropolis Management Amendment Act, 1862, shall, so far as is consistent with the tenor thereof, apply in the case of the election of members of the school board :
- (7.) The school board shall proceed at once to supply their district with sufficient public school accommodation, and any requisition sent by the Education Department to such board may relate to any of the divisions mentioned in the fifth schedule to this Act in like manner as if it were a school district, and it shall not be necessary for the Education Department to publish any notices before sending such requisition :
- (8.) The Education Department may, in the order fixing the boundaries of such divisions, name some person who shall be the returning officer for the purposes of the first election of the school board, and the person who is to be the deputy returning officer in each such division :
- (9.) The chairman of the school board shall be elected by the school board, and any chairman who may be elected by the board may be elected either from the members of the board or not, and any chairman who is not an elected member of the board shall, by virtue of his office, be a member of the board as if he had been so elected :

(10.) The school board shall apportion the amount required to be raised to meet the deficiency in the school fund among the different parts of the metropolis mentioned in the third column of the first schedule to this Act in proportion to the rateable value of such parts as shown by the valuation lists for the time being in force under "The Valuation (Metropolis) Act, 1869," or, if any amount is so required before any such valuation list comes into force, in the same proportion and according to the same basis in and according to which the then last rate made by the Metropolitan Board of Works was assessed :

(11.) For obtaining payment of the amount specified in any precept sent by the school board to the rating authority for any part of the metropolis, the school board, in addition to any other powers and remedies, shall have the like powers as the Metropolitan Board of Works have for obtaining payment of any sum assessed by them on the same part of the metropolis.

38. The school board for London may pay to the chairman of such board such salary as they may from time to time, with the sanction of the Education Department, fix.

39. If at any time application is made to the Education Department by the school board for London, or by any six members of that board, and it is shown to the satisfaction of the Education Department that the population of any of the divisions mentioned in the fifth schedule to this Act, as shown by any census taken under the authority of Parliament, has varied materially from that shown by the previous census, or that the rateable value of any of the said divisions has materially varied from the rateable value of the same division ten years previously, the Education Department, after such inquiry as they think necessary, may, if they think fit, make an order altering, by way of increase or decrease, the number of members of that and any other division.

#### *United School Districts.*

40. Where the Education Department are of opinion that it would be expedient to form a school district larger than a borough or a parish or any school district formed under this Act, they may, except in the metropolis, by order made after such inquiry and notice as herein-after mentioned, form a united school district by uniting any two or more adjoining school districts, and upon such union cause a school board to be formed for such united school district.

A united school district shall for all the purposes of this Act be deemed to be a school district, and shall throughout this Act be deemed to be substituted for the school districts out of which it is constituted, and the school board of the united school district shall be the school board appointed under this Act, and the local rate and rating authority for the united district shall be in each of the constituent districts thereof the same as if such constituent district did not form part of the united school district.

41. The Education Department, as soon as may be after the passing of this Act, may cause inquiry to be made into the expediency of uniting any two or more school districts, and if after such inquiry they are of opinion that it would be expedient to unite any such school districts, they shall in the notice of their decision as to the public school accommodation for such districts state that they propose to unite such districts, and the provisions of this Act with respect to the application for a public inquiry by persons aggrieved by the said notice, and to the holding of such public inquiry, and to the final notice, shall apply in the case of the proposed union of districts, with this qualification, that it shall not be necessary to cause a public inquiry to be held with respect to the union of districts until after the expiration of the period allowed by the final notice for the supply of the school accommodation. The order for the union may be made at the time when the Education Department are first authorised to cause a school board to be formed or subsequently. Where a union of districts is proposed the Education Department shall consider whether any public school accommodation is required for the area proposed as the united district instead of for each of the districts constituting such area, and their decision as to the public school accommodation and the notice of such decision shall accordingly refer to such area, and not separately to each of the constituent districts.

42. The Education Department may, by order made after such inquiry and notice as herein-after mentioned, dissolve a united school district, and may deal with the constituent districts thereof in the same manner as if they had never been united, and may cause school boards to be elected therein.

43. The Education Department may at any time, after any proceedings after the first returns under this Act, if they think fit, cause inquiry to be made into the expediency of forming or dissolving a united school district, and where they propose at any time after such inquiry to form or dissolve a united school district, they shall publish notice of the proposed order not less than

three months before the order is made; the like persons as are authorised to apply for a public inquiry after the first returns made under this Act may, if they feel aggrieved by the proposed order, apply in like manner for a public inquiry, and the Education Department shall cause a public inquiry to be held, and shall consider the report made to them upon such inquiry before they make the order for such formation or dissolution.

44. Any order of the Education Department forming or dissolving a united district shall be evidence of the formation or dissolution of such district, and after the expiration of three months from the date of such order the district shall be presumed to have been duly formed or dissolved, as the case may be, and no objection to the formation or dissolution thereof shall be entertained in any legal proceedings whatever.

45. The provisions in this Act respecting the constitution of the school board shall apply to the constitution of the school board in a united school district, and the name of the district shall be such as may be prescribed by the Education Department.

46. In a united school district the school board shall be such number of members elected by the electors of the district as may be specified in the order forming the district, subject nevertheless to alteration in the same manner as in the case of any other school board; and every person who in any of the districts constituting such united district would be entitled if it were not united to vote at the election of members of a school board for such constituent district shall be an elector for the purposes of this section, and the provisions of this Act respecting the election of a school board in a district shall extend to the election of such members.

47. Where any part of a proposed united school district includes any district or part of a district in which there is a school board already acting under this Act, or where a united school district is dissolved, the Education Department may by order dissolve the then existing school board, or make all necessary changes in the constitution of such existing school board, and may by order make proper arrangements respecting the schools, property, rights, and liabilities of such board, and all arrangements which may be necessary.

48. If the Education Department are of opinion that any parish in a united school district has too few ratepayers to be entitled to act as a separate parish for the purposes of this Act, they may by order direct that it shall, for the purpose of

voting for a member or members of the school board, and for all or any of the purposes of this Act, be added to another parish, and thereupon the persons who would be entitled to vote and attend the vestry if it were a parish shall be entitled for the purpose of voting and for such purposes to vote in and attend the vestry of the parish to which their parish is so added. All the parishes comprised in a united district, or any two or more of them, may be added together in pursuance of this section.

#### *Contributory Districts.*

49. The Education Department may by order direct that one school district shall contribute towards the provision or maintenance of public elementary schools in another school district or districts, and in such case the former (or contributing district) shall pay to the latter (or school owning district or districts) such proportion of the expenses of such provision or maintenance or a sum calculated in such manner as the Education Department may from time to time prescribe.

50. Where one school district contributes to the provision or maintenance of any school in another school district, such number of persons as the Education Department (having regard to the amount to be contributed by the contributing district) direct shall be elected in the contributing district, and shall be members of the school board of the school owning district, but such last-mentioned district shall, except so far as regards the raising of money and the attendance of children at school, be deemed alone to be the district of such school board; such members shall be elected by the school board, if any, or, if there is none, by the persons who would elect a school board if there were one, in the same manner as a school board would be elected.

51. The provisions of this Act with respect to the notices to be published, and the application for and the holding of a public inquiry in the case of an order for the formation of a united district, shall apply, *mutatis mutandis*, to an order respecting a contributory district.

An order respecting a contributory district shall be evidence of the formation of such district, and after the expiration of three months from the date thereof shall be presumed to have been duly made, and no objection to the legality thereof shall be entertained in any legal proceeding whatever.

Any such order may be revoked or altered by an order of the Education Department, and a new order may be made in lieu thereof, and all the provisions of this Act respecting the making of an order for contribution shall apply to the

making of an order for the revocation or alteration of an order for contribution.

52. The school boards of any two or more school districts, with the sanction of the Education Department, may combine together for any purpose relating to elementary schools in such districts, and in particular may combine for the purpose of providing, maintaining, and keeping efficient schools common to such districts. Such agreements may provide for the appointment of a joint body of managers under the provisions of this Act with respect to the appointment of a body of managers, and for the proportion of the contributions to be paid by each school district, and any other matters which, in the opinion of the Education Department, are necessary for carrying out such agreement, and the expenses of such joint body of managers shall be paid in the proportions specified in the agreement by each of the school boards out of their school fund.

#### *Expenses.*

53. The expenses of the school board under this Act shall be paid out of a fund called the school fund. There shall be carried to the school fund all moneys received as fees from scholars, or out of moneys provided by Parliament, or raised by way of loan, or in any manner whatever received by the school board, and any deficiency shall be raised by the school board as provided by this Act.

54. Any sum required to meet any deficiency in the school fund, whether for satisfying past or future liabilities, shall be paid by the rating authority out of the local rate.

The school board may serve their precept on the rating authority, requiring such authority to pay the amount specified therein to the treasurer of the school board out of the local rate, and such rating authority shall pay the same accordingly, and the receipt of such treasurer shall be a good discharge for the amount so paid, and the same shall be carried to the school fund.

If the rating authority have no moneys in their hands in respect of the local rate, they shall, or if they have paid the amount then for the purpose of reimbursing themselves they may, notwithstanding any limit under any Act of Parliament or otherwise, levy the said rate, or any contributions thereto, or any increase of the said rate or contributions, and for that purpose shall have the same powers of levying a rate and requiring contributions as they have for the purpose of defraying expenses to which the local rate is ordinarily applicable.

55. In a united district the school board shall apportion the amount required to meet the defi-

ciency in the school fund among the districts constituting such united district in proportion to the rateable value of each such constituent district, and may raise the same by a precept sent to the rating authority of each constituent district.

Where one school district contributes to the expenses of the schools in another school district, the authority of the school owning district may send their precept either to the school board, if any, or to the rating authority of the contributing district, requiring them to pay to their treasurer the amount therein specified, and such authority or board shall pay the same accordingly, and the receipt of the treasurer shall be a good discharge for the same, and such amount, if paid by the school board, shall be paid out of the school fund.

The precept, if sent to the rating authority, either on the default of the school board or otherwise, shall be deemed to be a precept for meeting a deficiency in the school fund, and the provisions of this Act shall apply accordingly.

56. In either of the following cases, that is to say,

- (1.) If the rating authority of any place make default in paying the amount specified in any precept of the school board; or
- (2.) Where a school board require to raise a sum from any place which is part of a parish,

then, without prejudice to any other remedy, the school board may appoint an officer or officers to act within such place; and the officer or officers so from time to time appointed shall have within the said place, for the purpose of defraying the sum due from such place, all the powers of the rating authority of levying the local rate and any contributions thereto, and also all the powers of making and levying a rate which he or they would have if the said place were a parish, and such rate were a rate for the relief of the poor, and he or they were duly appointed an overseer or overseers of such parish, and he and they shall have such access to and use of the documents of the rating authority of such place relative to the local rate, and of all the valuation lists and rate books of the parish or parishes comprised in or comprising such place, as he or they may require.

57. Where a school board incur any expense in providing or enlarging a schoolhouse, they may, with the consent of the Education Department, spread the payment over several years, not exceeding fifty, and may for that purpose borrow money on the security of the school fund and local rate, and may charge that fund and the local rate with the payment of the principal and interest due in respect of the loan. They may, if they so agree with the mortgagee, pay the amount

borrowed, with the interest, by equal annual instalments, not exceeding fifty, and if they do not so agree, they shall annually set aside one fiftieth of the sum borrowed as a sinking fund.

For the purpose of such borrowing the clauses of "The Commissioners Clauses Act, 1847," with respect to the mortgages to be executed by the commissioners, shall be incorporated with this Act; and in the construction of those clauses for the purpose of this Act, this Act shall be deemed to be the special Act, and the school board which is borrowing shall be deemed to be the commissioners.

The Public Works Loan Commissioners may, on the recommendation of the Education Department, lend any money required under this section on the security of the school fund and local rate without requiring any further or other security, such loan to be repaid within a period not exceeding fifty years, and to bear interest at the rate of three and a half per centum per annum.

58. Any sum borrowed by the school board for London in pursuance of this Act, with the approval of the Education Department, may be borrowed from and may be lent by the Metropolitan Board of Works, and section thirty-seven of The Metropolitan Board of Works Loan Act, 1869, shall apply to such loan in the same manner as if the managers therein mentioned were the school board for London, and there were added to the sum therein authorised to be borrowed the sum authorised by the Education Department to be borrowed under this section.

#### *Accounts and Audit.*

59. The accounts of the school board shall be made up and balanced to the twenty-fifth of March and twenty-ninth of September in every year. The accounts shall be examined by the school board and signed by the chairman within fourteen days after the day to which they are made up.

As soon as practicable after the accounts are so signed they shall be audited.

60. With respect to the audit of accounts of the school board the following provisions shall have effect:

- (1.) The auditor shall be the auditor of accounts relating to the relief of the poor for the audit district in which the school district is situate, or if it is situate in more than one audit district by the auditor of such of the said audit districts as the Poor Law Board may direct, and the term audit district in this provision shall be construed to include a parish for which an auditor is separately appointed to audit the accounts for the relief of the poor. The auditor shall receive such remunera-

tion as the Poor Law Board direct, and such remuneration, together with the expenses of or incident to the audit, shall be paid by the school board out of the school fund, and if unpaid may be recovered in a summary manner:

- (2.) The audit shall be held at the office of the school board, or some other place sanctioned by the Poor Law Board within the school district, or within the union within which the school district or some part thereof is situate, and at a time which is fixed by the auditor, but which shall be as soon as may be after the account is signed by the chairman:
- (3.) The auditor, at least fourteen days before holding the audit, shall serve on the school board, and publish notice of the time and place of holding the same:
- (4.) The clerk of the school board, or some person authorised by the school board, shall attend the audit, and produce to the auditor all books, bills, vouchers, and documents relating to the account:
- (5.) Any ratepayer of the school district may be present at the audit, and may object to the account:
- (6.) The auditor shall, as nearly as may be, have the like powers and be under the like obligation to allow and disallow items in the account, and to charge the school board, or any member or officer thereof, or any person accountable to them or him, with any sum for which they or he may be accountable, as in the case of an audit of the accounts relating to the relief of the poor in any union or parish; and any person aggrieved by the decision of the auditor shall have the like rights and remedies as in the case of such last-mentioned audit:
- (7.) The auditor shall have the like powers of requiring the attendance of persons, the production of books, bills, vouchers, and documents, and a declaration respecting vouchers and documents, as in the case of such last-mentioned audit; and any person who refuses or neglects to comply with any such requisition, or wilfully makes or signs a false declaration so required, shall be liable to the same penalties as in the case of such last-mentioned audit:
- (8.) Any moneys, books, documents, and chattels certified by the auditor to be due from any person may be recovered from such person in like manner as in the case of such last-mentioned audit, and the expenses incurred in such recovery shall be deemed to be part of the expenses of the audit:

- (9.) Subject to the provisions of this section the Poor Law Board may from time to time make such regulations as may be necessary respecting the form of keeping the accounts and the audit thereof.

61. Any member or officer of a school board, or manager appointed by them, who authorises or makes, or concurs in authorising or making, any payment or any entry in accounts for the purpose of defraying or making up to himself or any other person the whole or any part of any sum of money unlawfully expended from the school fund, or disallowed or surcharged by any auditor, shall, on summary conviction, be liable to pay a penalty not exceeding twenty pounds and double the amount of such sum.

62. When the auditor has completed the audit he shall sign the balance sheet.

The school board shall cause a statement showing their receipts and expenditure to be printed in such form and with such particulars as may be from time to time prescribed by the Education Department, and shall send the same within thirty days after the balance sheet is signed by the auditor to each member of the rating authority, and to the overseers of every parish in the district, and to the Education Department; and the school board may, if they think fit, publish such statement or an abstract thereof in any local newspaper or newspapers circulating in the district, and shall furnish a copy of such statement to any ratepayer in the district, on his application, and on the payment of a sum not exceeding sixpence.

#### *Defaulting School Board.*

63. Where the Education Department are, after such inquiry as they think sufficient, satisfied that a school board is in default as mentioned in this Act, they may by order declare such board to be in default, and by the same or any other order appoint any persons, not less than five or more than fifteen, to be members of such school board, and may from time to time remove any member so appointed, and fill up any vacancy in the number of such members, whether caused by removal, resignation, death, or otherwise, and, subject as aforesaid, add to or diminish the number of such members.

After the date of the order of appointment the persons (if any) who were previously members of the school board shall be deemed to have vacated their offices as if they were dead, but any such member may be appointed a member by the Education Department. The members so appointed by the Education Department shall be deemed to be members of the school board in the same manner in all respects as if, by election or otherwise, they had duly become members of the

school board under the other provisions of this Act, and may perform all the duties and exercise all the powers of the school board under this Act.

The members appointed by the Education Department shall hold office during the pleasure of the Education Department, and when that department consider that the said default has been remedied, and everything necessary for that purpose has been carried into effect, they may, by order, direct that members be elected for the school board in the same manner as in the case of the first formation of the school board. After the date fixed by any such order the members appointed by the Education Department shall cease to be members of the school board, and the members so elected shall be members of the school board in their room, but the members appointed by the Education Department shall not be disqualified from being so elected. Until any such order is made no person shall become a member of the school board otherwise than by the appointment of the Education Department.

Where a school board is not elected at the time fixed for the first election, or has ceased to be in existence, the Education Department may proceed in the same manner as if such board had been elected and were in existence.

64. The Education Department may from time to time certify the appointment of any persons appointed to be members of a school board in default, and the amount of expenses that have been incurred by such persons, and the amount of any loan required to be raised for the purpose of defraying any expenses so incurred, or estimated as about to be incurred; and such certificate shall be conclusive evidence that all the requirements of this Act have been duly complied with, and that the persons so appointed have been duly appointed, and that the amounts therein mentioned have been incurred or are required.

65. The expenses incurred in the performance of their duties by the persons appointed by the Education Department to be members of a school board, including such remuneration (if any) as the Education Department may assign to such persons, shall, together with all expenses incurred by the board, be paid out of the school fund; and any deficiency in the school fund may be raised by the school board as provided by this Act; and where the Education Department have, either before or after the payment of such expenses, certified that any expenses have been incurred by a school board, or any members appointed by them, such expenses shall be deemed to have been so incurred, and to have been properly paid out of the school fund.

Where the members of a school board have been appointed by the Education Department, such school board shall not borrow or charge the school fund with the principal and interest of any loan exceeding such amount as the Education Department certify as mentioned in this Act to be required.

66. Where the Education Department are of opinion that in the case of any school district the school board for such district are in default, or are not properly performing their duties under this Act, they may by order direct that the then members of the school board of such district shall vacate their seats, and that the vacancies shall be filled by a new election; and after the date fixed by any such order the then members of such board shall be deemed to have vacated their seats, and a new election shall be held in the same manner, and the Education Department shall take the same proceedings for the purpose of such election as if it were the first election; and all the provisions of this Act relating to such first election shall apply accordingly.

The Education Department shall cause to be laid before both Houses of Parliament in every year a special report stating the cases in which they have made any order under this section during the preceding year, and their reasons for making such order.

#### *Returns and Inquiry.*

67. On or before the first day of January one thousand eight hundred and seventy-one, or in the case of the metropolis before the expiration of four months from the date of the election of the chairman of the school board, every local authority herein-after mentioned, and subsequently any such local authority whenever required by the Education Department, but not oftener than once in every year, shall send to the Education Department a return containing such particulars with respect to the elementary schools and children requiring elementary education in their district as the Education Department may from time to time require.

68. For the purpose of obtaining such returns the Education Department shall draw up forms, and supply to the local authority such number of forms as may be required; and the managers or principal teacher of every school required to be included in any such return shall fill up the form, and return the same to the local authority within the time specified in that behalf in the form.

69. The returns shall be made in the metropolis by the school board appointed under this Act, in boroughs by the council, and in every parish not situated in a borough or the metropolis



by persons appointed for the purpose or by the overseers of such parish. Where a school board is formed under this Act, the returns shall be made by such school board within their district, instead of by the council, persons appointed as aforesaid, or overseers, as the case may be.

The persons appointed for the purpose may be appointed as follows; namely, the Education Department may, if they think fit, send to the overseers or other officers who have power to summon a vestry in such parish a requisition to summon, and such overseers or other officers shall summon, a vestry in such parish for the purpose of this section; and such vestry shall appoint two or more persons who shall be the local authority for the purpose of the returns under this Act.

The local authority may, with the sanction of the Education Department, employ persons to assist in making such returns, and may pay those persons such remuneration as the Treasury may sanction. That remuneration, and all such other reasonable expenses incurred by the local authority in making such returns as the Treasury may sanction, shall be paid by the Education Department.

70. If any local authority fail to make the returns required under this Act, the Education Department may appoint any person or persons to make such returns, and the person or persons so appointed shall for that purpose have the same powers and authorities as the local authority.

71. The Education Department may appoint any persons to act as inspectors of returns, who shall proceed to inquire into the accuracy and completeness of any one or more returns made in pursuance of this Act, and into the efficiency and suitability of any school mentioned in any such return, or which ought to have been mentioned therein, and to inspect and examine the scholars in every such school. Where there is no return the inspector shall proceed as if there had been a defective return.

72. If the managers or teacher of any school refuse or neglect to fill up the form required for the said return, or refuse to allow the inspector to inspect the schoolhouse or examine any scholar, or examine the school books and registers, or make copies or extracts therefrom, such school shall not be taken into consideration among the schools giving efficient elementary education to the district.

#### *Public Inquiry.*

73. Where a public inquiry is held in pursuance of the provisions of this Act, the following provisions shall have effect:

- (1.) The Education Department shall appoint some person who shall proceed to hold the inquiry:
- (2.) The person so appointed shall for that purpose hold a sitting or sittings in some convenient place in the neighbourhood of the school district to which the subject of inquiry relates, and thereat shall hear, receive, and examine any evidence and information offered, and hear and inquire into any objections or representations made respecting the subject of the inquiry, with power from time to time to adjourn any sitting.
- Notice shall be published in such manner as the Education Department direct of every such sitting (except an adjourned sitting) seven days at least before the holding thereof:
- (3.) The person so appointed shall make a report in writing to the Education Department setting forth the result of the inquiry, and stating his opinion on the subject thereof, and his reasons for such opinion, and the objections and representations, if any, made on the inquiry, and his opinion thereon; and the Education Department shall cause a copy of such report to be deposited with the school board (if any), or, if there is none, the town clerk of the borough, or the churchwardens or overseers of the parishes to which the inquiry relates, and notice of such deposit to be published:
- (4.) The Education Department may make an order directing that the costs of the proceedings and inquiry shall be paid, according as they think just, either by the district as if they were expenses of a school board, or by the applicants for the inquiry; and such costs may be recovered, in the former case, as a debt due from the school board, or, if there is no school board, as a debt due from the rating authority, and, in the case of the applicants, as a debt due jointly and severally from them; and the Education Department may, if they think fit, before ordering the inquiry to be held, require the applicants to give security for such expenses, and in case of their refusal may refuse to order the inquiry to be held.

#### *Attendance at School.*

74. Every school board may from time to time, with the approval of the Education Department, make byelaws for all or any of the following purposes:

- (1.) Requiring the parents of children of such age, not less than five years nor more than thirteen years, as may be fixed by the byelaws, to cause such children (unless

there is some reasonable excuse) to attend school :

- (2.) Determining the time during which children are so to attend school; provided that no such byelaw shall prevent the withdrawal of any child from any religious observance or instruction in religious subjects, or shall require any child to attend school on any day exclusively set apart for religious observance by the religious body to which his parent belongs, or shall be contrary to anything contained in any Act for regulating the education of children employed in labour :
- (3.) Providing for the remission or payment of the whole or any part of the fees of any child where the parent satisfies the school board that he is unable from poverty to pay the same :
- (4.) Imposing penalties for the breach of any byelaws :
- (5.) Revoking or altering any byelaw previously made.

Provided that any byelaw under this section requiring a child between ten and thirteen years of age to attend school shall provide for the total or partial exemption of such child from the obligation to attend school if one of Her Majesty's inspectors certifies that such child has reached a standard of education specified in such byelaw.

Any of the following reasons shall be a reasonable excuse; namely,

- (1.) That the child is under efficient instruction in some other manner :
- (2.) That the child has been prevented from attending school by sickness or any unavoidable cause :
- (3.) That there is no public elementary school open which the child can attend within such distance, not exceeding three miles, measured according to the nearest road from the residence of such child, as the byelaws may prescribe.

The school board, not less than one month before submitting any byelaw under this section for the approval of the Education Department, shall deposit a printed copy of the proposed byelaws at their office for inspection by any ratepayer, and supply a printed copy thereof gratis to any ratepayer, and shall publish a notice of such deposit.

The Education Department before approving of any byelaws shall be satisfied that such deposit has been made and notice published, and shall cause such inquiry to be made in the school district as they think requisite.

Any proceeding to enforce any byelaw may be taken, and any penalty for the breach of any byelaw may be recovered, in a summary manner; but no penalty imposed for the breach of any

byelaw shall exceed such amount as with the costs will amount to five shillings for each offence, and such byelaws shall not come into operation until they have been sanctioned by Her Majesty in Council.

It shall be lawful for Her Majesty, by Order in Council, to sanction the said byelaws, and thereupon the same shall have effect as if they were enacted in this Act.

All byelaws sanctioned by Her Majesty in Council under this section shall be set out in an appendix to the annual report of the Education Department.

#### *Miscellaneous.*

75. Where any school or any endowment of a school was excepted from The Endowed Schools Act, 1869, on the ground that such school was at the commencement of that Act in receipt of an annual parliamentary grant, the governing body (as defined by that Act) of such school or endowment may frame and submit to the Education Department a scheme respecting such school or endowment.

The Education Department may approve such scheme with or without any modifications as they think fit.

The same powers may be exercised by means of such scheme as may be exercised by means of any scheme under The Endowed Schools Act, 1869; and such scheme, when approved by the Education Department, shall have effect as if it were a scheme made under that Act.

A certificate of the Education Department that a school was at the commencement of The Endowed Schools Act, 1869, in receipt of an annual parliamentary grant, shall be conclusive evidence of that fact for all purposes.

76. Where the managers of any public elementary school not provided by a school board desire to have their school inspected or the scholars therein examined, as well in respect of religious as of other subjects, by an inspector other than one of Her Majesty's inspectors, such managers may fix a day or days not exceeding two in any one year for such inspection or examination.

The managers shall, not less than fourteen days before any day so fixed, cause public notice of the day to be given in the school, and notice in writing of such day to be conspicuously affixed in the school.

On any such day any religious observance may be practised, and any instruction in religious subjects given at any time during the meeting of the school, but any scholar who has been withdrawn by his parent from any religious observance or instruction in religious subjects shall not be required to attend the school on any such day.

77. Where a parish is situated partly within and partly without a borough, the part situate

outside of the borough shall be taken to be for all the purposes of this Act, except as otherwise expressly mentioned, a parish by itself, and the ratepayers thereof may meet in vestry in the same manner in all respects as if they were the inhabitants of a parish; every such meeting, and also the meeting for the purposes of this Act of the ratepayers of any parish (the ratepayers of which have not usually met in vestry), shall be deemed to be a vestry, and, save as provided by this Act, be subject to the Act of the fifty-eighth year of the reign of King George the Third, chapter sixty-nine, and the Acts amending the same, and, subject as aforesaid, shall be summoned by the persons and in the mode prescribed by the Education Department; and the overseers of the whole parish shall be deemed to be the overseers of any such part of a parish.

78. The Education Department shall, for the purposes of The Charitable Trusts Acts, 1853 to 1869, be deemed to be persons interested in any elementary school to which those Acts are applicable, and the endowment thereof.

79. The rateable value of any parish or school district shall for the purposes of this Act be the rateable value as stated in the valuation lists, if any, and if there are none, then as stated in the rate book for the time being in force in such parish and in the parishes constituting the district; and the overseers and other persons having the custody of such valuation lists and rate book shall, when required by the school board, produce such lists and rate book to the school board, and allow the school board and any person appointed by them to inspect the same, and take copies of or extracts therefrom.

80. Notices and other matters required by this Act to be published shall, unless otherwise expressly provided, be published,—

- (1.) By advertisement in some one or more of the newspapers circulating in the district or place to which such notice relates :
- (2.) By causing a copy of such notices or other matter to be published to be affixed, during not less than twelve hours in the day, on Sunday on or near the principal doors of every church and chapel in such district or place to which notices are usually affixed, and at every other place in such district or place at which notices are usually affixed.

81. Certificates, notices, requisitions, orders, precepts, and all documents required by this Act to be served or sent may, unless otherwise expressly provided, be served and sent by post, and, till the contrary is proved, shall be deemed to have been served and received respectively at the time when the letter containing the same would

be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that the letter containing the certificate, notice, requisition, order, precept, or document was prepaid, and properly addressed, and put into the post.

82. Certificates, notices, requisitions, orders, and other documents may be served on a school board by serving the same on their clerk, or by sending the same to or delivering the same at the office of such board.

Certificates, notices, requisitions, orders, precepts, and other documents may be in writing or in print, or partly in writing and partly in print, and if requiring authentication by a school board may be signed by their clerk.

83. All orders, minutes, certificates, notices, requisitions, and documents of the Education Department, if purporting to be signed by some secretary or assistant secretary of the Education Department, shall, until the contrary is proved, be deemed to have been so signed and to have been made by the Education Department, and may be proved by the production of a copy thereof purporting to have been so signed.

The Documentary Evidence Act, 1868, shall apply to the Education Department in like manner as if the Education Department were mentioned in the first column of the schedule to that Act, and any member of the Education Department, or any secretary or assistant secretary of the Education Department, were mentioned in the second column of that schedule.

84. After the expiration of three months from the date of any order or requisition of the Education Department under this Act, such order or requisition shall be presumed to have been duly made, and to be within the powers of this Act, and no objection to the legality thereof shall be entertained in any legal proceeding whatever.

85. A school board may appear in all legal proceedings by their clerk, or by some member of the board authorised by a resolution of the board; and every such resolution shall appear upon the minutes of the proceedings of the board, but every such resolution shall, until the contrary is proved, be deemed in any legal proceeding to appear upon such minutes.

86. The provisions of the School Sites Acts with respect to the tenure of the office of the schoolmaster or schoolmistress, and to the recovery of possession of any premises held over by a master or mistress who has been dismissed or ceased to hold office, shall extend to the case of any school provided by a school board, and of any master or mistress of such school, in the

same manner as if the school board were the trustees or managers of the school as mentioned in those Acts.

87. Every ratepayer in a school district may at all reasonable times, without payment, inspect and take copies of and extracts from all books and documents belonging to or under the control of the school board of such district.

Any person who hinders a ratepayer from so inspecting or taking copies of or extracts from any book or document, or demands a fee for allowing him so to do, shall be liable, on summary conviction, to a penalty not exceeding five pounds for each offence.

88. If any returning officer, clerk, or other person engaged in an election of a school board under this Act wilfully makes or causes to be made an incorrect return of the votes given at such election, every such offender shall, upon summary conviction, be liable to a penalty not exceeding fifty pounds.

89. If any person wilfully personates any person entitled to vote in the election of a school board under this Act, or answers falsely any question put to him in voting in pursuance of an order made under the second schedule to this Act, or falsely assumes to act in the name or on the behalf of any person so entitled to vote, he shall be liable, on summary conviction, for every such offence to a penalty not exceeding twenty pounds.

90. If any person knowingly personate and falsely assume to vote in the name of any person entitled to vote in any election under this Act, or forge or in any way falsify any name or writing in any paper purporting to contain the vote or votes of any person voting in any such election, or by any contrivance attempt to obstruct or prevent the purposes of any such election, or wilfully contravene any regulation made by the Education Department under the second schedule to this Act with respect to the election, the contravention of which is expressed to involve a penalty, the person so offending shall upon summary conviction be liable to a penalty of not more than fifty pounds, and in default of payment thereof to be imprisoned for a term not exceeding six months.

91. Any person who at the election of any member of a school board or any officer appointed for the purpose of such election is guilty of corrupt practices shall, on conviction, for each offence be liable to a penalty not exceeding two pounds, and be disqualified for the term of six years after such election from exercising any

franchise at any election under this Act, or at any municipal or parliamentary election.

The term corrupt practices in this section includes all bribery, treating, and undue influence which under any Act relating to a parliamentary election renders such election void.

92. Any penalty and any money which under this Act is recoverable summarily, and all proceedings under this Act which may be taken in a summary manner, may be recovered and taken before two justices in manner directed by an Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and the Acts amending the same.

93. In the case of the borough of Oxford, the provisions of this Act relating to boroughs shall be construed as if the local board were therein mentioned instead of the council; if a school board is formed in the borough of Oxford, one third of the school board shall be elected by the university of Oxford, or the colleges and halls therein, in such manner as may be directed by the Education Department by an order made under the power contained in the second schedule to this Act.

94. The schedules to this Act shall be of the same force as if they were enacted in this Act, and the Acts mentioned in the fourth schedule to this Act may be cited in the manner in that schedule mentioned.

95. Every school board shall make such report and returns and give such information to the Education Department as the department may from time to time require.

#### (II.) PARLIAMENTARY GRANT.

96. After the thirty-first day of March one thousand eight hundred and seventy-one no parliamentary grant shall be made to any elementary school which is not a public elementary school within the meaning of this Act.

No parliamentary grant shall be made in aid of building, enlarging, improving, or fitting up any elementary school, except in pursuance of a memorial duly signed, and containing the information required by the Education Department for enabling them to decide on the application, and sent to the Education Department on or before the thirty-first day of December one thousand eight hundred and seventy.

97. The conditions required to be fulfilled by an elementary school in order to obtain an

annual parliamentary grant shall be those contained in the minutes of the Education Department in force for the time being, and shall amongst other matters provide that after the thirty-first day of March one thousand eight hundred and seventy-one—

(1.) Such grant shall not be made in respect of any instruction in religious subjects:

(2.) Such grant shall not for any year exceed the income of the school for that year which was derived from voluntary contributions, and from school fees, and from any sources other than the parliamentary grant;

but such conditions shall not require that the school shall be in connexion with a religious denomination, or that religious instruction shall be given in the school, and shall not give any preference or advantage to any school on the ground that it is or is not provided by a school board:

Provided that where the school board satisfy the Education Department that in any year ending the twenty-ninth of September the sum required for the purpose of the annual expenses of the school board of any school district, and actually paid to the treasurer of such board by the rating authority, amounted to a sum which would have been raised by a rate of threepence in the pound on the rateable value of such district, and any such rate would have produced less than twenty pounds, or less than seven shillings and sixpence per child of the number of children in average attendance at the public elementary schools provided by such school board, such school board shall be entitled, in addition to the annual parliamentary grant in aid of the public elementary schools provided by them, to such further sum out of moneys provided by Parliament as, when added to the sum actually so paid by the rating authority, would, as

the case may be, make up the sum of twenty pounds, or the sum of seven shillings and sixpence for each such child, but no attendance shall be reckoned for the purpose of calculating such average attendance unless it is an attendance as defined in the said minutes:

Provided that no such minute of the Education Department not in force at the time of the passing of this Act shall be deemed to be in force until it has lain for not less than one month on the table of both Houses of Parliament.

98. If the managers of any school which is situate in the district of a school board acting under this Act, and is not previously in receipt of an annual parliamentary grant, whether such managers are a school board or not, apply to the Education Department for a parliamentary grant, the Education Department may, if they think that such school is unnecessary, refuse such application.

The Education Department shall cause to be laid before both Houses of Parliament in every year a special report stating the cases in which they have refused a grant under this section during the preceding year, and their reasons for each such refusal.

99. The managers of every elementary school shall have power to fulfil the conditions required in pursuance of this Act to be fulfilled in order to obtain a parliamentary grant, notwithstanding any provision contained in any instrument regulating the trusts or management of their school, and to apply such grant accordingly.

#### *Report.*

100. The Education Department shall in every year cause to be laid before both Houses of Parliament a report of their proceedings under this Act during the preceding year.

#### FIRST SCHEDULE.

School District.	School Board.	Local Rate.	Rating Authority.
The Metropolis	The school board appointed under this Act.	In the city of London the consolidated rate. In the parishes mentioned in schedule A. and the districts mentioned in schedule B. to the Metropolis Management Act, 1855, the general rate, and fund raised by the general rate.	The commissioners of sewers. In the parishes the vestry, and in the districts the district board.

School District.	School Board.	Local Rate.	Rating Authority.
Boroughs, except Oxford -	The school board appointed under this Act.	In places mentioned in schedule C. to the said Act, the rate levied for the purposes of the Metropolitan Poor Act, 1867, and any Act amending the same. The borough fund or borough rate.	The masters of the bench, treasurer, governors, or other persons who have the chief control or authority in such place. The council.
District of the local board of Oxford.	The school board appointed under this Act.	Rate leviable by the local board.	The local board.
Parishes not included in any of the above-mentioned districts.	The school board appointed under this Act.	The poor rate -	The overseers.

## SECOND SCHEDULE.

## FIRST PART.

*Rules respecting Election and Retirement of Members of a School Board.*

1. The election of a school board shall be held at such time, and in such manner, and in accordance with such regulations as the Education Department may from time to time by order prescribe, and the Education Department may by order appoint or direct the appointment of any officers requisite for the purpose of such election, and do all other necessary things preliminary or incidental to such election: Provided, that any poll shall be taken in the metropolis in like manner as a poll is taken under "The Metropolis Management Act, 1855," and shall be taken in any other district in like manner as a poll of burgesses or ratepayers (as the case may be) is usually taken in such district.

2. The expenses of the election and taking the poll in any district other than the metropolis shall be paid by the school board out of the school fund.

3. An order made by the Education Department under the power contained in this part of this schedule shall, as regards any election held before the first day of September one thousand eight hundred and seventy-one, be deemed to be within the powers of this schedule, and to have been duly made and have effect as if it were enacted in this schedule, but shall not be of any force as regards any election after the said date unless it has been confirmed by Parliament.

4. Any such order so far as relates to the metropolis shall supersede any provisions contained

in the Acts relating to the election of common councilmen, and in the Metropolis Management Act, 1855, and the Acts amending the same.

5. If from any cause no members are elected at the time at which they ought to be elected in accordance with this Act, then—

(a.) In the case of the first election the Education Department may appoint another day for the election, or may proceed as in the case of a school board in default:

(b.) In the case of a triennial election the retiring members, or so many as are willing to serve, shall be deemed to be re-elected, or, if all the retiring members refuse to serve, the Education Department may appoint another day for the election, or may proceed as in the case of a school board in default.

6. If an insufficient number of members are elected, or if, in the case of no members being elected, some of the retiring members are and some are not willing to serve, the school board, so far as it is constituted, shall elect a person to fill each vacancy.

7. No election under this Act shall be questioned on the ground of the title of the returning officer, or any person presiding at the poll, or any officer connected with the election.

8. Notice of the election of a person to be a member of the school board shall be sent to that person by the returning officer: in the case of the first election such notice shall be accompanied by a summons to attend the first meeting of the school board at the prescribed time.

9. The day for the triennial retirement of members shall be the prescribed day.

10. The first members shall retire from office

on the day for retirement which comes next after the expiration of three years from the day fixed for the first election.

11. Members chosen to fill the offices of retiring members shall come into office on the day for retirement, and shall hold office for three years only.

12. Any person who ceases to be a member of the school board shall, unless disqualified as herein-after mentioned, be re-eligible.

13. A member of the school board may resign on giving to the board one month's previous notice in writing of his intention so to do.

14. If a member of the school board absents himself during six successive months from all meetings of the board, except from temporary illness or other cause to be approved by the board, or is punished with imprisonment for any crime, or is adjudged bankrupt, or enters into a composition or arrangement with his creditors, such person shall cease to be a member of the school board, and his office shall thereupon be vacant.

15. If any casual vacancy in office occurs by death, resignation, disqualification, or otherwise, an election shall be held in manner directed by an order made under the power contained in this part of this schedule.

16. If by any means the number of members of a school board is reduced to less than the number required for a quorum, the Education Department may proceed as if such board were a board in default, or may direct an election to be held to fill up the vacancies in manner directed by an order made under the power contained in this part of this schedule.

17. The member chosen to fill up a casual vacancy shall retain his office so long only as the vacating member would have retained the same if no vacancy had occurred.

18. If the number of the board is reduced in pursuance of the provisions of this Act, the chairman of the board shall at some meeting, as soon as may be after such reduction, determine by ballot on the members who shall retire, so as to reduce the number of the board to the number to which it is so reduced.

19. The term "prescribed" in this schedule means prescribed by some minute or order of the Education Department.

## SECOND PART.

### *Rules respecting Resolutions for Application for School Board.*

1. The meeting of a council for the purpose of passing such a resolution shall be summoned in the manner in which a meeting of the council is ordinarily summoned, and the resolution shall be

passed by a majority of the members present and voting on the question.

2. The resolution passed by the persons who would elect the school board shall be passed in like manner as near as may be as that in which a member of the school board is elected, with such necessary modifications as may be contained in any order made under the powers of the first part of this schedule, and such powers shall extend to the passing of the resolution in like manner as if it were an election, but the expenses incurred with reference to such a resolution shall be paid by the overseers out of the poor rate.

3. If a resolution is rejected, the resolution shall not be again proposed until the lapse of twelve months from the date of such rejection.

## THIRD PART.

### *Rules for Election of School Board in Metropolis.*

1. If any person be returned for more than one division he shall, at or before the first meeting of the school board after such election, signify in writing to the board his decision as to the division which he may desire to represent on such return, and if he fails so to do the school board shall decide the division which he shall represent; and upon any such decision the office of member for the other division shall be deemed vacant. Such vacancy shall be filled up by an election to be held in manner directed by an order made under the power contained in the first part of this schedule.

2. The provisions in the first part of this schedule shall apply in the case of the school board in the metropolis.

3. The provisions in the first part of this schedule with respect to the proceedings in the case of no members being elected for a school district shall not only apply to the whole of the metropolis, but shall apply to the case of no members being elected for any particular division, with this qualification, that the Education Department shall not proceed as in the case of a school board in default, but may direct that persons may be elected by the school board to be members for such division.

4. In the places named in schedule (C.) to "The Metropolis Management Act, 1855," the expenses of the election shall be paid out of the local rate, and such rate, or any increase of the rate, may be levied for the purpose.

5. The day for the retirement of members from office shall be the first day of December.

6. Any casual election shall be held on the day fixed by the school board, and shall be an election for the division a member for which has created the vacancy.

7. If any vacancy is filled up by the school board the election shall be by the whole school board.

### THIRD SCHEDULE.

#### *Proceedings of School Board.*

1. The board shall meet for the despatch of business, and shall from time to time make such regulations with respect to the summoning, notice, place, management, and adjournment of such meetings, and generally with respect to the transaction and management of business, including the quorum at meetings of the board, as they think fit, subject to the following conditions:—

- (a.) The first meeting shall be held on the third Thursday after the election of the board, and if not held on that day shall be held on some day to be fixed by the Education Department:
  - (b.) Not less than one ordinary meeting shall be held in each month; one meeting shall be held as soon as possible after every triennial election of members:
  - (c.) An extraordinary meeting may be held at any time on the written requisition of three members of the board addressed to the clerk of the board:
  - (d.) The quorum to be fixed by the board shall consist of not less than three members, and in the case of the metropolis not less than nine members:
  - (e.) Every question shall be decided by a majority of votes of the members present and voting on that question:
  - (f.) The names of the members present, as well as of those voting upon each question, shall be recorded:
  - (g.) No business involving the appointment or dismissal of a teacher, any new expense, or any payment (except the ordinary periodical payments), or any business which under this Act requires the consent of the Education Department, shall be transacted unless notice in writing of such business has been sent to every member of the board seven days at least before the meeting.
2. The board shall at their first meeting, and afterwards from time to time at their first meeting after each triennial election, appoint some person to be chairman, and one other person to be vice-chairman, for the three years for which the board hold office.

3. If any casual vacancy occurs in the office of chairman or vice-chairman the board shall, as soon as they conveniently can after the occurrence of such vacancy, choose one of their members to fill such vacancy, and every such chairman or vice-chairman so elected as last aforesaid shall

continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such vacancy had not happened.

4. If at any meeting the chairman is not present at the time appointed for holding the same the vice-chairman shall be the chairman of the meeting, and if neither the chairman nor vice-chairman shall be present then the members present shall choose some one of their number to be chairman of such meeting.

5. In case of an equality of votes at any meeting the chairman for the time being of such meeting shall have a second or casting vote.

6. All orders of the board for payment of money, and all precepts issued by the board, shall be deemed to be duly executed if signed by two or more members of the board authorised to sign them by a resolution of the board, and countersigned by the clerk; but in any legal proceeding it shall be presumed, until the contrary is proved, that the members signing any such order or precept were authorised to sign them.

7. The appointment of any officer of the board may be made by a minute of the board, signed by the chairman of the board, and countersigned by the clerk (if any) of the board, and any appointment so made shall be as valid as if it were made under the seal of the board.

8. Precepts of the board may be in the form given at the end of this schedule.

#### *Proceedings of Managers appointed by a School Board.*

The managers may elect a chairman of their meetings. If no such chairman is elected, or if the chairman elected is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting. The managers may meet and adjourn as they think proper. The quorum of the managers shall consist of such number of members as may be prescribed by the school board that appointed them, or, if no number be prescribed, of three members. Every question at a meeting shall be determined by a majority of votes of the members present and voting on that question, and in case of an equal division of votes the chairman shall have a second or casting vote.

The proceedings of the managers shall not be invalidated by any vacancy or vacancies in their number.

#### *Form of Precept.*

School district of \_\_\_\_\_ to wit.

To the council [or overseers, &c.] of the borough [or parish] of \_\_\_\_\_. These are to require you, the council [or overseers] of the borough [or parish] of \_\_\_\_\_, from and out of the moneys in the hands of your treasurer



[or your hands], to pay on or before the  
day of \_\_\_\_\_ into the hands of A.B.,  
treasurer of the school board of the said district,  
the sum of \_\_\_\_\_ being the amount re-  
quired for the expenses of the said school board  
up to the \_\_\_\_\_ of \_\_\_\_\_ 18 \_\_\_\_\_ ;  
and if there are no moneys in the hands of your

treasurer [or your hands] to raise the same by  
means of a rate.

(Signed) C.D., { Members of the school  
E.F., { board of the district  
G.H., { of  
Clerk of the said school  
board.

#### FOURTH SCHEDULE.

##### SCHOOL SITES ACTS.

The following Acts may be cited together as the "School Sites Acts, 1841 to 1851."

Year and Chapter of Act.	Title of Act.	Port Title by which Acts may be cited.
4 & 5 Vict. c. 38.	- An Act to afford further facilities for the conveyance and endowment of sites for schools.	The School Sites Act, 1841.
7 & 8 Vict. c. 37.	- An Act to secure the terms on which grants are made by Her Majesty out of the Parliamentary grant for the education of the poor; and to explain the Act of the fifth year of Her present Majesty, for the conveyance of sites for schools.	The School Sites Act, 1844.
12 & 13 Vict. c. 49.	- An Act to extend and explain the provisions of the Acts for the granting of sites for schools.	The School Sites Act, 1849.
14 & 15 Vict. c. 24.	- An Act to amend the Acts for the granting of sites for schools.	The School Sites Act, 1851.

#### FIFTH SCHEDULE.

##### DIVISIONS OF METROPOLIS.

Name of Division.	Name of Division.
Marylebone. Finsbury. Lambeth. Tower Hamlets. Hackney.	Westminster. Southwark. City. Chelsea. Greenwich.

## CHAP. 76.

*The Absconding Debtors Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Provisions of Bankruptcy Act, 1869, extended.*
2. *When arrest not valid.*
3. *Security for debt given after arrest.*
4. *Construction of terms.*
5. *Costs and fees.*
6. *Short title.*

An Act to facilitate the Arrest of  
Absconding Debtors.

(9th August 1870.)

WHEREAS the laws now in force for the arrest of debtors absconding from England are insufficient for that purpose :

And whereas frauds may be perpetrated upon creditors by insolvent debtors departing for distant countries before the necessary proceedings can be taken to make them bankrupt :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. That the provisions of the Bankruptcy Act, 1869, be extended in manner following :

The Court may, by warrant addressed to any constable or prescribed officer of the Court, cause a debtor to be arrested and safely kept as prescribed until such time as the Court may order, if, after a debtor's summons has been granted in the manner prescribed by the said Act, and before a petition of bankruptcy can be presented against him, it appear to the Court that there is probable reason for believing that he is about to go abroad, with a view of avoiding payment of the debt for which the summons has been granted, or of avoiding service of a petition of bankruptcy, or of avoiding appearing to such petition, or of avoiding examination in respect of his affairs, or otherwise avoiding, delaying, or embarrassing proceedings in bankruptcy : Provided always, that nothing herein contained shall be construed to alter or qualify the right of the debtor to apply to the Court in the prescribed

manner to dismiss the said summons as in the said Act is provided, or to pay, secure, or compound for the said debt within the time by the said Act provided, without being deemed to have committed an act of bankruptcy ; and provided also, that upon any such payment or composition being made, or such security offered as the Court shall think reasonable, the said debtor shall be discharged out of custody, unless the Court shall otherwise order.

2. No arrest shall be valid or protected under this Act unless the debtor, before or at the time of his arrest, shall be served with the debtor's summons.

3. No payment or composition of a debt made or security for the same given after an arrest made under the provisions of this Act shall be exempted from the provisions of the said Act relating to fraudulent preferences.

4. The terms used in this Act shall have the same meaning as they have in the said recited Act, and this Act shall be read and construed therewith.

5. The costs and fees to be charged in respect of any proceedings authorised shall be prescribed in the like manner in which costs and fees to be charged in respect of proceedings under the Bankruptcy Act, 1869, are respectively directed by that Act to be prescribed.

6. In citing this Act in other Acts of Parliament, or in any instrument, document, or proceeding, it shall be sufficient to use the expression "The Absconding Debtors Act, 1870."

## CHAP. 77.

*The Juries Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Commencement of Act.*
2. *Application of Act.*
3. *Short titles of certain Acts.*
4. *Construction of Act and repeal of inconsistent enactments.*
5. *Definition of terms.*
6. *Qualification of special jurors.*
7. *Qualification of jurors in Wales.*
8. *Aliens to be qualified after ten years domicile, but not otherwise.*
9. *Persons exempt from serving on juries.*
10. *Convicts (exception), outlaws, &c. disqualified.*
11. *Overseers to specify special jurors in list.*
12. *Disqualification or exemption to be pleaded before revision of list.*
13. *Penalty on overseer for negligence.*
14. *Justices to certify jury lists after revision.*
15. *Special jurors' names to be retained in jurors book.*
16. *Special juries for London and Middlesex to be provided in the same manner as in other counties.*
17. *Abolition of present practice of nominating special juries in London and Middlesex.*
18. *Mode of obtaining special jury in London and Middlesex.*
19. *Summoning of jurors.*
20. *Jurors entitled to six days notice.*
21. *Sheriff to make regulations as to attendance.*
22. *Payment of jurors.*
23. *Jurors to be allowed fire and refreshment.*
24. *Judges to make general orders.*
25. *Jury lists in the city of London to be made as before.*  
*Schedule.*

An Act to amend the Laws relating to the qualifications, summoning, attendance, and remuneration of Special and Common Juries. (9th August 1870.)

WHEREAS it is expedient to amend the laws regulating the qualification, summoning, attendance, and remuneration of special and common juries in England and Wales, and otherwise to amend the laws as to trials by jury in England and Wales:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act shall not come into force till the second day of November one thousand eight hundred and seventy.

2. This Act shall not apply to Scotland or Ireland.

3. The Acts herein-after mentioned may be cited for all purposes by the short titles following; that is to say,

An Act of the session of the sixth year of the reign of King George the Fourth, chapter fifty, and intituled "An Act for consolidating and amending the Laws relative to Jurors and Juries," by the short title of "The County Juries Act, 1825;"  
this Act by the short title of "The Juries Act, 1870."

4. This Act shall be construed as one with "The County Juries Act, 1825," and any Act amending the same; and such parts of the said Act and of any other Act or Acts as are inconsistent with this Act are hereby repealed.

5. In this Act—

The term "overseers" shall include churchwardens, and the term "quarter sessions" shall include general sessions:

The word "juror" shall mean male persons only.

6. Every man whose name shall be in the jurors book for any county in England or Wales, or for the county of the city of London, and who shall be legally entitled to be called an esquire, or shall be a person of higher degree, or shall be a banker or merchant, or who shall occupy a private dwelling house rated or assessed to the poor rate or to the inhabited house duty on a value of not less than one hundred pounds in a town containing, according to the census next preceding the preparation of the jury list, twenty thousand inhabitants and upwards, or rated or assessed to the poor rate or to the inhabited house duty on a value of not less than fifty pounds elsewhere, or who shall occupy premises other than a farm rated or assessed as aforesaid on a value of not less than one hundred pounds, or a farm rated or assessed as aforesaid on a value of not less than three hundred pounds, shall be qualified and liable to serve on special juries in every such county in England and Wales, and in London respectively.

7. So much of the said first section of the County Juries Act, 1825, as relates to the qualification of persons as jurors in Wales is hereby repealed, and it is hereby enacted, that the qualification of persons as jurors in Wales shall be the same as the qualification of persons as jurors in England.

8. Aliens having been domiciled in England or Wales for ten years or upwards, if in other respects duly qualified, shall be qualified and shall be liable to serve on juries or inquests in England and Wales as if they had been natural-born subjects of the Queen; but, save as aforesaid, no man not being a natural-born subject of the Queen shall be qualified to serve on juries or inquests in any court or on any occasion whatsoever.

9. The inhabitants of the city and liberty of Westminster shall, as heretofore, be exempt from serving on any jury at the sessions of the peace for the county of Middlesex.

The persons described in the schedule hereto shall be severally exempt as therein specified from being returned to serve and from serving upon any juries or inquests whatsoever, and their names shall not be inserted in the lists of the persons qualified and liable to serve on the same, but, save as aforesaid, no man otherwise qualified to serve on such juries or inquests shall be exempt from serving thereon, any enactment, prescription, charter, grant, or writ to the contrary notwithstanding.

10. Provided always, and it is hereby enacted, that no man who has been or shall be attainted of any treason or felony, or convicted of any

crime that is infamous, unless he shall have obtained a free pardon, nor any man who is under outlawry, is or shall be qualified to serve on juries or inquests in any court or on any occasion whatsoever.

11. In making out the lists of persons within their respective parishes and townships qualified to serve as jurors, the overseers shall specify which of such persons are, in the judgment of such overseers, qualified as special jurors, and shall also specify in every case the nature of the qualification and also the occupation and the amount of the rating or assessment of every such person.

12. No person whose name shall be in the jury book as a juror shall be entitled to be excused from attendance on the ground of any disqualification or exemption other than illness not claimed by him at or before the revision of the list by the justices of the peace, and a notice to that effect shall be printed at the bottom of every jury list.

13. If any overseer, without reasonable excuse to be allowed by the justice or justices having cognizance of the case, insert in the list of persons qualified to serve as jurors prepared by him the name of any person whose name ought not to have been inserted therein, or omit therefrom the name of any person whose name ought not to have been omitted, he shall, on summary conviction, be liable to a penalty for each offence not exceeding forty shillings.

14. Upon completing the revision of the jury lists, the justices at petty sessions shall certify in writing that they have examined such lists, and that the same are, to the best of their knowledge and belief, true and proper lists of the special and common jurors; and the decision of such justices as to the qualifications of persons marked as special jurors in the lists so revised by them shall, as respects those lists, be final.

15. And whereas by the thirty-first section of "The County Juries Act, 1825," it is enacted, that "the sheriff of every county in England and Wales or his under sheriff, and the sheriffs of London or their secondary, shall, within ten days after the delivery of the jurors book for the current year to either of them, take from such book the names of all men who shall be described therein as esquires, persons of higher degree, or as bankers or merchants." Be it enacted, that nothing in this said section contained shall be deemed to authorise the said sheriffs or any of them, or any under sheriff, or any secondary, to remove from the jurors book the name of any person by reason of his being

therein described as an esquire or person of higher degree, or as a banker or merchant, nor shall the said sheriffs or any sheriff or under sheriff or secondary remove from the jurors book the name of any person by reason of his being otherwise qualified to serve on special juries.

16. In London and Middlesex, on the occasion of any sittings of the superior courts, or any of them, for the trial of issues, a sufficient number of special jurymen, not less than thirty for each court, shall be summoned to try the special jury causes triable at such sittings.

The said jurymen shall be summoned in pursuance of a precept under the hand of any one of the judges of the said superior courts in the same manner in all respects in which special jurymen are summoned in pursuance of precepts issued by the judges of assize.

The persons summoned in pursuance of such precept shall be the jury for the trial of special jury causes at such sittings in the said courts respectively, subject to such right of challenge as the parties shall be entitled to.

A printed panel of the jurors so summoned shall be made and kept, and a copy thereof delivered and annexed to the nisi prius record at the like time, in the same manner, and upon the same terms as are by law prescribed with reference to the panel of common jurors in the case of London and Middlesex.

Upon the trial the special jury shall be ballotted for and called in the order in which they are drawn from the box in the same manner as common jurors.

Any special jurymen summoned to serve in any one of the said superior courts shall be qualified and be liable, in case of necessity, to serve in any other of the said courts as if he had been originally summoned as one of the jurymen for the trial of special jury causes in such last-mentioned court.

17. The present practice of nominating and reducing special jurors in London and Middlesex shall cease to be followed as regards the trial of any cause at any of the said sittings of the said courts, subject to this proviso, that any of the said superior courts or any judge thereof may, if it seems expedient, order that a special jury be struck according to the present practice, and such order shall be a sufficient warrant for striking such jury and making a panel thereof for the trial of the particular cause.

18. In London and Middlesex, subject to any rules which may be made by any of the superior courts in that behalf, any party to any action triable at any of the aforesaid sittings of the superior courts shall be entitled to have the cause tried by a special jury upon the same conditions

as would entitle him to have it so tried in any county other than London and Middlesex.

In London and Middlesex every court or judge shall have the same power of ordering that a cause be tried by a special jury as the like court or judge would have if the cause were tried in any county other than London and Middlesex.

19. The following regulations shall be enacted with respect to the summoning of jurors :

1. That no person shall be summoned to serve on any jury or inquest (except a grand jury) more than once in any one year, unless all the jurors upon the list shall have been already summoned to serve during such year : Provided that nothing herein contained shall prejudice the operation of any certificate granted under the County Juries Act, 1825, secs. 41 and 42 :
2. No person shall be exempted from serving as a common juror by reason of his being on any special jurors list, or being qualified to serve as a grand juror :
3. No person shall be summoned or liable to serve as a juror in more than one court on the same day.

20. No juror shall be liable to any penalty for non-attendance on any jury unless the summons requiring him to attend be duly served six days at least before the day on which he is required to attend, but no longer period than such six days shall in any case be required between the service and such last-mentioned day.

21. It shall be lawful for any sheriff or other officer to whom any precept for summoning jurors shall be addressed, with the consent of the person or persons by whom such precept shall have been issued, to make regulations as to the attendance of jurors during the time for which they shall be summoned, and in particular as to the days on which, and the time during which, they are to attend.

Such regulations may be sent to any juror, together with the summons requiring him to attend on any jury, and when so sent shall be deemed to be part of such summons.

22. Jurors shall be entitled to the following remuneration for their services ; that is to say,

Every special juror, when summoned for the purpose of trying special jury cases, at the rate of one pound one shilling for every day of his attendance.

The remuneration of a juror, when trying common jury cases, shall be at the rate of ten shillings for every day of his attendance.

The above-mentioned remuneration shall be paid by the parties to the causes to be tried, and for that purpose each of the said parties shall deposit such sum of money as may be determined

by any rule of the court in which the cause is depending; and such deposit shall be made in such manner, at such time, and with such officer as the said court may prescribe.

23. Jurors, after having been sworn, may, in the discretion of the judge, be allowed at any time before giving their verdict the use of a fire when out of court, and be allowed reasonable refreshment, such refreshment to be procured at their own expense.

24. The judges of Her Majesty's superior courts of common law are hereby empowered by general orders to make rules, not inconsistent with this Act, for the purpose of carrying out the several provisions of this Act.

25. This Act shall not alter or affect the mode of procedure pursued in the making out of jury lists for the city of London, nor the provisions of the ninth and tenth Victoria, chapter ninety-five, section seventy-two.

#### SCHEDULE.

##### PERSONS EXEMPT FROM SERVING ON JURIES.

Peers.

Members of Parliament.

Judges.

Clergymen.

Roman Catholic priests.

Ministers of any congregation of Protestant dissenters and of Jews whose place of meeting is duly registered, provided they follow no secular occupation except that of a schoolmaster.

Serjeants, barristers-at-law, certificated conveyancers, and special pleaders, if actually practising.

Members of the Society of Doctors of Law and advocates of the civil law, if actually practising.

Attornies, solicitors, and proctors, if actually practising and having taken out their annual certificates, and their managing clerks, and notaries public in actual practice.

Officers of the courts of law and equity, and of the Admiralty and Ecclesiastical Courts, including therein the Courts of Probate and Divorce, and the clerks of the peace or their deputies, if actually exercising the duties of their respective offices.

Coroners.

Gaolers and keepers of houses of correction, and all subordinate officers of the same.

Keepers in public lunatic asylums.

Members and licentiates of the Royal College of Physicians in London, if actually practising as physicians.

Members of the Royal Colleges of Surgeons in London, Edinburgh, and Dublin, if actually practising as surgeons.

Apothecaries certificated by the Court of Examiners of the Apothecaries Company, and all registered medical practitioners and registered pharmaceutical chemists, if actually practising as apothecaries, medical practitioners, or pharmaceutical chemists respectively.

Officers of the navy, army, militia, and yeomanry, while on full pay.

The members of the Mersey Docks and Harbour Board.

The master, wardens, and brethren of the Corporation of Trinity House of Deptford Strond.

Pilots licensed by the Trinity House of Deptford Strond, Kingston-upon-Hull, or Newcastle-upon-Tyne, and all masters of vessels in the buoy and light service employed by either of those corporations, and all pilots licensed under any Act of Parliament or charter for the regulation of pilots.

The household servants of Her Majesty, her heirs and successors.

Officers of the Post Office, Commissioners of Customs, and officers, clerks, or other persons acting in the management or collection of the Customs, Commissioners of Inland Revenue, and officers or persons appointed by the Commissioners of Inland Revenue or employed by them or under their authority or direction in any way relating to the duties of Inland Revenue.

Sheriffs officers.

Officers of the rural and metropolitan police.

Magistrates of the metropolitan police courts, their clerks, ushers, doorkeepers, and messengers.

Members of the council of the municipal corporation of any borough, and every justice of the peace assigned to keep the peace therein, and the town clerk and treasurer for the time being of every such borough, so far as relates to any jury summoned to serve in the county where such borough is situate.

Burgesses of every borough in and for which a separate court of quarter sessions shall be holden so far as relates to any jury summoned for the trial of issues joined in any court of general or quarter sessions of the peace in the county wherein such borough is situate.

Justices of the peace, so far as relates to any jury summoned to serve at any sessions of the peace for the jurisdiction of which he is a justice.

Officers of the Houses of Lords and Commons.

## CHAP. 78.

*The Tramways Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

*Preliminary.*

1. *Short title.*
2. *Limitation of Act.*
3. *Interpretation of terms.*

## PART I.

*Provisional Orders authorising the Construction of Tramways.*

4. *By whom Provisional Orders authorising the construction of tramways may be obtained.*
5. *The Board of Trade may in certain cases dispense with the consent of local or road authority.*
6. *Notices and deposit of documents by promoters as in schedule.*
7. *Power for Board of Trade to determine on application and on objection.*
8. *Power for Board of Trade to make Provisional Order. Form and contents of Provisional Order.*
9. *Regulations as to construction of tramways in towns.*
10. *Nature of traffic on tramway and tolls to be specified in Provisional Order.*
11. *Costs of Order.*
12. *Promoters to deposit 4l. per cent. on estimate in prescribed bank.*
13. *Publication of Provisional Order as in schedule.*
14. *Confirmation of Provisional Order by Act of Parliament.*
15. *Incorporation of general Acts in Provisional Order.*
16. *Power of Board of Trade to revoke, amend, extend, or vary Provisional Order.*
17. *Power to authorise joint work.*
18. *Cesser of powers at expiration of prescribed time.*
19. *Local authority may lease or take tolls.*
20. *How expenses to be defrayed.*
21. *Metropolitan Board may, for carrying Provisional Order into effect, create stock under Loans Act of 1869.*

## PART II.

*Construction of Tramways.*

22. *As to incorporation of Parts II. and III. of this Act with Provisional Order and special Acts.*
23. *"Special Act."*
24. *"Promoters."*
25. *Mode of formation of tramways.*
26. *Power to break up streets, &c.*
27. *Completion of works and reinstatement of road.*
28. *Repair of part of road where tramway is laid.*
29. *Road authority and promoters may contract for paving roads on which tramways are laid.*
30. *Provision as to gas and water companies.*
31. *For protection of sewers, &c.*
32. *Rights of authorities and companies, &c. to open roads.*
33. *Difference between promoters and road authority, &c.*

## PART III.

## GENERAL PROVISIONS.

*Carriages.*

34. *Power for promoters to use tramways with flange-wheeled carriages, &c.*

*Licenses to use Tramways.*

35. *Licenses to use the tramway may in certain events be granted to third parties by the Board of Trade.*
36. *In default of payment of tolls licensee's carriages may be detained and sold.*

- 37. *Licensees to give account of passengers carried by them.*
- 38. *Licensees not giving account of passengers carried liable to penalty.*
- 39. *Disputes as to amount of toll to be settled by justice.*
- 40. *Owners of carriages liable for damage done by their servants.*

*Discontinuance of Tramways.*

- 41. *Tramways to be removed in certain cases.*

*Insolvency of Promoters.*

- 42. *Proceedings in case of insolvency of promoters.*

*Purchase of Tramways.*

- 43. *Future purchase of undertaking by local authority.*
- 44. *Power of sale.*

*Tolls.*

- 45. *Tolls, &c.*

*Byelaws.*

- 46. *Byelaws by local authority. Promoters may make certain regulations.*
- 47. *Penalties may be imposed in byelaws.*
- 48. *Power to local authority to license drivers, conductors, &c.*

*Offences.*

- 49. *Penalty for obstruction of promoters in laying out tramway.*
- 50. *Penalties for wilful injury or obstruction to tramways, &c.*
- 51. *Penalty on passengers practising frauds on the promoters.*
- 52. *Transient offenders.*
- 53. *Penalty for bringing dangerous goods on the tramway.*
- 54. *Penalty for persons using tramways with carriages with flange wheels, &c.*

*Miscellaneous.*

- 55. *Promoters or lessees to be responsible for all damages.*
- 56. *Recovery of tolls, penalties, &c.*
- 57. *Right of user only.*
- 58. *Arrangements between turnpike road trustees and promoters.*
- 59. *Reservation of rights of owners, &c. of mines.*
- 60. *Reserving powers of street authorities to widen, &c. roads.*
- 61. *Power for local or police authorities to regulate traffic in roads.*
- 62. *Reservation of right of public to use roads.*
- 63. *Regulating inquiries before referee appointed by the Board of Trade.*
- 64. *Rules for carrying Act into effect.*

*Schedules.*

An Act to facilitate the construction and to regulate the working of Tramways.  
(9th August 1870.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

*Preliminary.*

- 1. This Act may be cited for all purposes as "The Tramways Act, 1870."
- 2. This Act shall not extend to Ireland.

3. For the purposes of this Act, the terms herein-after mentioned shall have the meanings herein-after assigned to them; that is to say,  
The terms "local authority" and "local rate" shall mean respectively the bodies of persons and rate named in the table in Part One of the schedule (A.) to this Act annexed:  
The term "road" shall mean any carriageway being a public highway, and the carriageway of any bridge forming part of or leading to the same:  
The term "road authority" shall mean, in the districts specified in the table in Part Two of the schedule (A.) to this Act annexed, the bodies of persons named in the same table, and elsewhere any local authority, board,



town council, body corporate, commissioners, trustees, vestry, or other body or persons in whom a road as defined by this Act is vested, or who have the power to maintain or repair such road:

The term "district," in relation to a local authority or road authority, shall mean the area within the jurisdiction of such local authority or road authority:

The term "prescribed" shall mean prescribed by any rules made in pursuance of this Act:

The term "the Lands Clauses Acts" means, so far as the Provisional Order in which that term is used relates to England, The Lands Clauses Consolidation Act, 1845; and, so far as the same relates to Scotland, The Lands Clauses Consolidation (Scotland) Act, 1845; together with, in each case, The Lands Clauses Consolidation Acts Amendment Act, 1860:

The term "two justices" shall, in addition to its ordinary signification, mean one stipendiary or police magistrate acting in any police court for the district.

#### PART I.

##### *Provisional Orders authorising the construction of Tramways.*

4. Provisional Orders authorising the construction of tramways in any district may be obtained by—

- (1.) The local authority of such district; or by—
- (2.) Any person, persons, corporation, or company, with the consent of the local authority of such district; or of the road authority of such district where such district is or forms part of a highway district formed under the provisions of "The Highway Acts:"

And any such local authority, person, persons, corporation, or company shall be deemed to be promoters of a tramway, and are in this Act referred to as "the promoters."

Application for a Provisional Order shall not be made by any local authority until such application shall be approved in the manner prescribed in Part III. of the schedule A. to this Act annexed.

Where in any district there is a road authority distinct from the local authority, the consent of such road authority shall also be necessary in any case where power is sought to break up any road subject to the jurisdiction of such road authority, before any Provisional Order can be obtained.

5. Where it is proposed to lay down a tramway in two or more districts, and any local or road authority having jurisdiction in any of such dis-

tricts does not consent thereto, the Board of Trade may, nevertheless, make a Provisional Order authorising the construction of such tramway if they are satisfied, after inquiry, that two thirds of the length of such tramway is proposed to be laid in a district or in districts the local and road authority or the local and road authorities of which district or districts do consent thereto; and in such case they shall make a special report stating the grounds upon which they have made such order.

6. The promoters intending to make an application for a Provisional Order shall proceed as follows:—

- (1.) In the months of October and November next before their application, or in one of those months, they shall publish notice of their intention to make such application by advertisement; and they shall, on or before the fifteenth day of the following month of December, serve notice of such intention, in accordance with the standing orders (if any) of both Houses of Parliament for the time being in force with respect to Bills for the construction of tramways:
- (2.) On or before the thirtieth day of the same month of November they shall deposit the documents described in Part Two of the same schedule, according to the regulations therein contained:
- (3.) On or before the twenty-third day of December in the same year they shall deposit the documents described in Part Three of the same schedule, according to the regulations therein contained:

All maps, plans, and documents required by this Act to be deposited for the purposes of any Provisional Order may be deposited with the persons and in the manner directed by the Act of the session of Parliament held in the seventh year of the reign of His late Majesty King William the Fourth and the first year of Her present Majesty, intituled "An Act to compel clerks of "the peace for counties and other persons to "take the custody of such documents as shall "be directed to be deposited with them under "the standing orders of either House of Parliament;" and all the provisions of that Act shall apply accordingly.

7. The Board of Trade shall consider the application, and may, if they think fit, direct an inquiry in the district to which the same relates, or may otherwise inquire as to the propriety of proceeding upon such application, and they shall consider any objection thereto that may be lodged with them on or before such day as they from time to time appoint, and shall determine whether

or not the promoters may proceed with the application.

8. Where it appears to the Board of Trade expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, the Board of Trade may settle and make a Provisional Order accordingly.

Every such Provisional Order shall empower the promoters therein specified to make the tramway upon the gauge and in manner therein described, and shall contain such provisions as (subject to the requirements of this Act) the Board of Trade, according to the nature of the application and the facts and circumstances of each case, think fit to submit to Parliament for confirmation in manner provided by this Act; but so that any such Provisional Order shall not contain any provision for empowering the promoters or any other person to acquire lands otherwise than by agreement, or to acquire any lands, even by agreement, except to an extent therein limited, or to construct a tramway elsewhere than along or across a road, or upon land taken by agreement.

9. Every tramway in a town which is hereafter authorised by Provisional Order shall be constructed and maintained as nearly as may be in the middle of the road; and no tramway shall be authorised by any Provisional Order to be so laid that for a distance of thirty feet or upwards a less space than nine feet and six inches shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway if one third of the owners or one third of the occupiers of the houses, shops, or warehouses abutting upon the part of the road where such less space shall intervene as aforesaid shall in the prescribed manner and at the prescribed time express their dissent from any tramway being so laid.

10. Every such Provisional Order shall specify the nature of the traffic for which such tramway is to be used, and the tolls and charges which may be demanded and taken by the promoters in respect of the same, and shall contain such regulations relating to such traffic and such tolls and charges as the Board of Trade shall deem necessary and proper.

11. The costs of and connected with the preparation and making of each Provisional Order shall be paid by the promoters, and the Board of Trade may require the promoters to give security for such costs before they proceed with the Provisional Order.

12. After a Provisional Order is ready, and before the same is delivered by the Board of

Trade, the promoters, unless they are a local authority, shall within the prescribed time and in the prescribed manner, and subject to the prescribed conditions as to interest, repayment, or forfeiture, pay, as a deposit, into the prescribed bank, the sum of money prescribed, which shall not be less than four pounds per centum on the amount of the estimate by the promoters of the expense of the construction of the tramway, or deposit in such bank any security of the prescribed nature the then value of which is not less than such sum of money.

13. When a Provisional Order has been made as aforesaid and delivered to the promoters, the promoters shall forthwith publish the same by deposit and advertisement, according to the regulations contained in Part Four of the schedule (B.) to this Act.

14. On proof to the satisfaction of the Board of Trade of the completion of such publication as aforesaid, the Board of Trade shall, as soon as they conveniently can after the expiration of seven days from the completion of such publication, procure a Bill to be introduced into either House of Parliament in relation to any Provisional Order which shall have been published as aforesaid not later than the twenty-fifth of April in any year, for an Act to confirm the Provisional Order, which shall be set out at length in the schedule to the Bill; and until confirmation, with or without amendment, by Act of Parliament, a Provisional Order under this Act shall not have any operation.

If while any such Bill is pending in either House of Parliament a petition is presented against any Provisional Order comprised therein, the Bill, so far as it relates to the order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Bill for a special Act.

The Act of Parliament confirming a Provisional Order under this Act shall be deemed a Public General Act.

15. The provisions of The Lands Clauses Acts shall be incorporated with every Provisional Order under this Act, save where the same are expressly varied or excepted by any such Provisional Order, and except as to the following provisions, namely,—

- (1.) With respect to the purchase and taking of lands otherwise than by agreement;
- (2.) With respect to the entry upon lands by the promoters of the undertaking.

For the purposes of such incorporation a Provisional Order under this Act shall be deemed the special Act.

16. The Board of Trade on the application of any promoters empowered by a Provisional

Order may from time to time revoke, amend, extend, or vary such Provisional Order by a further Provisional Order.

Every application for such further Provisional Order shall be made in like manner and subject to the like conditions as the application for the former Provisional Order.

Every such further Provisional Order shall be made and confirmed in like manner in every respect as the former Provisional Order, and until such confirmation such further Provisional Order shall not have any operation.

17. Subject and according to the provisions of this Act, the Board of Trade may, on a joint application, or on two or more separate applications, settle and make a Provisional Order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof; and all the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of such tramway as last aforesaid; and the form of the Provisional Order may be adapted to the circumstances of the case.

18. If the promoters, empowered by any Provisional Order under this Act to make a tramway, do not, within two years from the date of the same, or within any shorter period prescribed therein, complete the tramway, and open it for public traffic; or,

If within one year from the date of the Provisional Order, or within such shorter time as is prescribed in the same, the works are not substantially commenced; or,

If the works having been commenced are suspended without a reason sufficient in the opinion of the Board of Trade to warrant such suspension;

the powers given by the Provisional Order to the promoters for constructing such tramway, executing such works, or otherwise in relation thereto, shall cease to be exercised, except as to so much of the same as is then completed, unless the time be prolonged by the special direction of the Board of Trade; and as to so much of the same as is then completed the Board of Trade may allow the said powers to continue and to be exercised if they shall think fit, but failing such permission the same shall cease to be exercised, and where such permission is withheld then so much of the said tramway as is then completed shall be deemed to be a tramway to which all the provisions of this Act relating to the discontinuance of tramways after proof of such discontinuance shall apply, and may be dealt with accordingly.

A notice purporting to be published by the

Board of Trade in the London or Edinburgh Gazette, accordingly as the district to which it relates is situate in England or Scotland, to the effect that a tramway has not been completed and opened for public traffic, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purposes of this section of such non-completion, non-commencement, or suspension.

19. When a tramway has been completed under the authority of a Provisional Order by any local authority, or where any local authority has under the provisions of this Act acquired possession of any tramway, such authority may, with the consent of the Board of Trade, and subject to the provisions of this Act, by lease, to be approved of by the Board of Trade, demise to any person, persons, corporation, or company the right of user by such person, persons, corporation, or company of the tramway, and of demanding and taking in respect of the same the tolls and charges authorised; or such authority may leave such tramway open to be used by the public, and may in respect of such user demand and take the tolls and charges authorised; but nothing in this Act contained shall authorise any local authority to place or run carriages upon such tramway, and to demand and take tolls and charges in respect of the use of such carriages.

Notice of the intention to make such lease shall be published by the local authority by advertisement, and a copy of such lease shall be deposited according to the regulations contained in Part I. of the Schedule (C.) to this Act annexed; and unless such notice is given, and such copy deposited, such lease shall not be approved of by the Board of Trade.

Every such lease shall be made for a term or for terms not exceeding in the whole twenty-one years.

On the determination of any lease made under this Act, the local authority may from time to time, with the consent of the Board of Trade, by lease, demise such rights for such further term or terms, not exceeding in any case twenty-one years, as the said Board may approve.

Every such lease shall imply a condition of re-entry if at any time after the making of the same the lessees discontinue the working of the tramway leased, or of any part thereof, for the space of three calendar months (such discontinuance not being occasioned by circumstances beyond the control of such lessees, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control).

The person, persons, corporation, or company to whom any such lease may be made are in this Act referred to as "lessees."

20. Where the local authority in any district are the promoters of any tramway, they shall pay all expenses incurred by them in applying for and obtaining a Provisional Order, and carrying into effect the purposes of such Provisional Order, out of the local rate, and any such expenses shall be deemed to be purposes for which such local rate may be made, and to which the same may be applied.

Where the local rate is limited by law to a certain amount, and is by reason of such limitation insufficient for the payment of such expenses, the Board of Trade may, by the Provisional Order, extend the limit of such local rate to such amount as they shall think fit, and prescribe for the payment of such expenses.

Such local authority may, for the purposes of such Provisional Order, borrow and take up at interest, on the credit of such local rate, any sums of money necessary for defraying any such expenses; and for the purpose of securing the repayment of any sums so borrowed, together with such interest as aforesaid, such local authority may mortgage to the persons by or on behalf of whom such sums are advanced such local rate; but the exercise of the above-mentioned power shall be subject to the following regulations:

- (1.) The money so borrowed shall not exceed such sum as may be sanctioned by the Board of Trade:
- (2.) The money may be borrowed for such time, not exceeding thirty years, as such local authority, with the sanction of the Board of Trade, shall determine; and, subject as aforesaid to the repayment within thirty years, such local authority may either pay off the moneys so borrowed by equal annual instalments, or they may in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing the same in the purchase of exchequer bills or other government securities, such sum as will be sufficient to pay off the moneys so borrowed, or a part thereof, at such times as the local authority may determine.

The provisions of "The Commissioners Clauses Act, 1847," with respect to the mortgages to be executed by the Commissioners, shall apply to any mortgage executed under the foregoing provisions of this section, and for the purposes of such application the said provisions shall be incorporated with this Act.

For the purposes of such incorporation, the terms "the special Act," and "the Commissioners," shall be construed to mean respectively a Provisional Order under this Act, and the local authority.

Such local authority shall keep separate ac-

counts of all moneys paid by them in applying for, obtaining, and carrying into effect any such Provisional Order, and in the repayment of moneys borrowed, and of all moneys received by them by way of rent or tolls in respect of the tramway authorised thereby.

When, after payment of all charges incurred under the authority of this Act, and necessary for giving effect to such Provisional Order, there shall be remaining in the hands of such local authority any of the moneys received by them by way of rent or tolls in respect of the tramway authorised by such Provisional Order, such moneys shall be applied by them to the purposes for which the local rate may be by them applied.

21. The Metropolitan Board of Works may, in order to raise money for the purpose of carrying into effect the purposes of any Provisional Order obtained by them, create additional stock, not exceeding in the whole three hundred thousand pounds, under "The Metropolitan Board of Works (Loans) Act, 1869," in like manner, and with the like sanction, in and with which they may create stock in order to raise money for the purposes of the Acts mentioned in the first schedule to that Act; and all the provisions of that Act shall apply as if that money were raised and that stock were created for the purposes of the last-mentioned Acts, with the exception that the money required for the purposes of any such Provisional Order may be borrowed by them in addition to the sum limited by section thirty-eight of "The Metropolitan Board of Works (Loans) Act, 1869."

## PART II.

### *Construction of Tramways*

22. Part II. and Part III. of this Act shall apply to every tramway which is hereafter authorised by any Provisional Order or Act of Parliament, and shall be incorporated with such Provisional Order or Act, and all the said provisions of this Act, save so far as they shall be expressly varied or excepted by any such Provisional Order or Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the provisions of every other Act or part of any Act which shall be incorporated therewith, form part of the said Provisional Order or Act, and be construed therewith as forming one Provisional Order or Act, as the case may be.

23. In Part II. and Part III. of this Act, the term "special Act" shall be construed to mean any Act of Parliament which shall be hereafter

passed or any Provisional Order authorising the construction of a tramway, and with which the said parts of this Act shall be incorporated as aforesaid.

24. The term "the promoters" shall mean any person, persons, corporation, company, or local authority authorised by special Act to construct a tramway.

25. Every tramway which is hereafter authorised by special Act shall be constructed on such gauge as may be prescribed by such special Act, and if no gauge is thereby prescribed, on such gauge as will admit of the use upon such tramways of carriages constructed for use upon railways of a gauge of four feet eight inches and half an inch, and shall be laid and maintained in such manner that the uppermost surface of the rail shall be on a level with the surface of the road, and shall not be opened for public traffic until the same has been inspected and certified to be fit for such traffic, in the prescribed manner.

26. The promoters from time to time, for the purpose of making, forming, laying down, maintaining, and renewing any tramway duly authorised, or any part or parts thereof respectively, may open and break up any road, subject to the following regulations:

1. They shall give to the road authority notice of their intention, specifying the time at which they will begin to do so, and the portion of road proposed to be opened or broken up, such notice to be given seven days at least before the commencement of the work:
2. They shall not open, or break up, or alter the level of any road, except under the superintendence and to the reasonable satisfaction of the road authority, unless that authority refuses or neglects to give such superintendence at the time specified in the notice, or discontinues the same during the work:
3. They shall pay all reasonable expenses to which the road authority is put on account of such superintendence:
4. They shall not, without the consent of the road authority, open or break up at any one time a greater length than one hundred yards of any road which does not exceed a quarter of a mile in length, and in the case of any road exceeding a quarter of a mile in length the promoters shall leave an interval of at least a quarter of a mile between any two places at which they may open or break up the road, and they shall not open or break up at any such place a greater length than one hundred yards.

Where the carriageway over any bridge forms

part of or is a road within the jurisdiction of a road authority, but such bridge is vested in some person or persons, corporation, or company, distinct from such road authority, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with the structural works of such bridge, shall be constructed under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of such person, persons, corporation, or company, unless after notice to be given by the promoters seven days at least before the commencement of such work such superintendence is refused or withheld.

Where the carriageway in or upon which any tramway is proposed to be formed or laid down is crossed by any railway or tramway on the level, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with such railway or tramway, or the traffic thereon, shall be constructed and maintained under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of the person, corporation, or company owning such railway or tramway, unless after notice to be given by the promoters seven days at least before the commencement of such work such superintendence is refused or withheld.

27. When the promoters have opened or broken up any portion of any road, they shall be under the following further obligations; namely,

1. They shall, with all convenient speed, and in all cases within four weeks at the most (unless the road authority otherwise consents in writing) complete the work on account of which they opened or broke up the same, and (subject to the formation, maintenance, or renewal of the tramway) fill in the ground and make good the surface, and to the satisfaction of the road authority, restore the portion of the road to as good condition as that in which it was before it was opened or broken up, and clear away all surplus paving or metalling material or rubbish occasioned thereby:
2. They shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night:
3. They shall bear or pay all reasonable expenses of the repair of the road for six months after the same is restored, as far as those expenses are increased by the opening or breaking up.

If the promoters aforesaid fail to comply in any respect with the provisions of the present section, they shall for every such offence (without prejudice to the enforcement of specific performance of the requirements of this Act or to any

other remedy against them) be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for each day during which any such failure continues after the first day on which such penalty is incurred.

28. The promoters shall, at their own expense, at all times maintain and keep in good condition and repair, with such materials and in such manner as the road authority shall direct, and to their satisfaction, so much of any road whereon any tramway belonging to them is laid as lies between the rails of the tramway and (where two tramways are laid by the same promoters in any road at a distance of not more than four feet from each other) the portion of the road between the tramways, and in every case so much of the road as extends eighteen inches beyond the rails of and on each side of any such tramway. If the promoters abandon their undertaking, or any part of the same, and take up any tramway or any part of any tramway belonging to them, they shall with all convenient speed, and in all cases within six weeks at the most (unless the road authority otherwise consents in writing), fill in the ground and make good the surface, and, to the satisfaction of the road authority, restore the portion of the road upon which such tramway was laid to as good a condition as that in which it was before such tramway was laid thereon, and clear away all surplus paving or metalling material or rubbish occasioned by such work; and they shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night: Provided always, that if the promoters fail to comply with the provisions of this section, the road authority, if they think fit, may themselves at any time, after seven days notice to the promoters, open and break up the road, and do the works necessary for the repair and maintenance or restoration of the road, to the extent in this section above mentioned, and the expense incurred by the road authority in so doing shall be repaid to them by the promoters.

29. The road authority on the one hand and the promoters on the other hand may from time to time enter into and carry into effect, and from time to time alter, renew, or vary, contracts, agreements, or arrangements with respect to the paving and keeping in repair of the whole or any portion of the roadway of any road on which the promoters shall lay any tramway, and the proportion to be paid by either of them of the expense of such paving and keeping in repair.

30. For the purpose of making, forming, laying down, maintaining, repairing, or renewing any of their tramways, the promoters may from time to time, where and as far as it is necessary,

or may appear expedient for the purpose of preventing frequent interruption of the traffic by repairs or works in connexion with the same, alter the position of any mains or pipes for the supply of gas or water, or any tube, wires, or apparatus for telegraphic or other purposes, subject to the provisions of this Act, and also subject to the following restrictions; (that is to say,)

1. Before laying down a tramway in a road in which any mains or pipes, tubes, wires, or apparatus may be laid, the promoters shall, whether they contemplate altering the position of any such mains or pipes, wires, or apparatus, or not, give seven days notice to the company, persons, or person to whom such mains or pipes, tubes, wires, or apparatus may belong or by whom they are controlled, of their intention to lay down or alter the tramway, and shall at the same time deliver a plan and section of the proposed work. If it should appear to any such company or person that the construction of the tramway as proposed would endanger any such main or pipe, tube, wire, or apparatus, or interfere with or impede the supply of water or gas or the telegraphic or other communication, such company or person (as the case may be) may give notice to the promoters to lower or otherwise alter the position of the said mains or pipes, tubes, wires, or apparatus in such manner as may be considered necessary, and any difference as to the necessity of any such lowering or alteration shall be settled in manner provided by this Act for the settlement of differences between the promoters and other companies or persons, and all alterations to be made under this section shall be made with as little detriment and inconvenience to the company or person to whom such mains or pipes, tubes, wires, or apparatus may belong, or by whom the same are controlled, or to the inhabitants of the district, as the circumstances will admit, and under the superintendence of a surveyor or engineer if they or he think fit, until the attend, after receiving not less than forty-eight hours notice for that purpose, of which notice the promoters are hereby required to give:
2. The promoters shall not remove or displace any of the mains or pipes, valves, syphons, plugs, tubes, wires, or apparatus, or works belonging to or controlled by such company or person, or do anything to impede the passage of water or gas, or the telegraphic or other communication, into or through such mains or pipes, without the consent of such company or person, or in any other manner than such

company or person shall approve, until good and sufficient mains, pipes, valves, syphons, plugs, and other works necessary or proper for continuing the supply of water or gas or telegraphic or other communication, as sufficiently as the same was supplied by the mains or pipes, tubes, wires, or apparatus proposed to be removed or displaced, shall at the expense of the promoters have been first made and laid down in lieu thereof and ready for use, and to the satisfaction of the surveyor or engineer of such water or gas or other company, or of such person, or, in case of disagreement between such surveyor or engineer and the promoters, as an engineer appointed by the Board of Trade shall direct:

3. The promoters shall not lay down any such pipes contrary to the regulations of any Act of Parliament relating to such water or gas or other company, or relating to telegraphs:
4. The promoters shall make good all damage done by them to property belonging to or controlled by any such company or person, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with such property, or with the private service pipes of any person supplied by any such company or person with water or gas:
5. If by any such operations as aforesaid the promoters interrupt the supply of water or gas in or through any main or main pipe they shall be liable to a penalty not exceeding twenty pounds for every day upon which such supply shall be so interrupted.

31. Where in any district any tramway or any work connected therewith interferes with any sewer, drain, watercourse, subway, defence, or work in such district, or in any way affects the sewerage or drainage of such district, the promoters shall not commence any tramway or work until they shall have given to the proper authority fourteen days previous notice in writing of their intention to commence the same, by leaving such notice at the principal office of such authority with all necessary particulars relating thereto, nor until such authority shall have signified their approval of the same, unless such authority do not signify their approval, disapproval, or other directions within fourteen days after service of the said notice and particulars as aforesaid, and the promoters shall comply with and conform to all reasonable directions and regulations of the said authority in the execution of the said works, and shall provide by new, altered, or substituted

works, in such manner as such authority shall reasonably require, for the proper protection of and for preventing injury or impediment to the sewers and works herein-before referred to, by or by reason of the tramways, and shall save harmless the said authority against all and every the expense to be occasioned thereby; and all such works shall be done under the direction, superintendence, and control of the engineer or other officer or officers of the said authority, at the reasonable costs, charges, and expenses in all respects of the promoters; and when any new, altered, or substituted work as aforesaid, or any works or defence connected therewith, shall be completed by or at the costs, charges, or expenses of the promoters, under the provisions of this Act, the same shall thereafter be as fully and completely under the direction, jurisdiction, and control of the said authority and be maintained by them as any sewers or works.

32. Nothing in this Act shall take away or abridge any power to open or break up any road along or across which any tramway is laid, or any other power vested in any local authority or road authority for any of the purposes for which such authority is respectively constituted, or in any company, body, or person for the purpose of laying down, repairing, altering, or removing any pipe for the supply of gas or water, or any tubes, wires, or apparatus for telegraphic or other purposes, but in the exercise of such power every such local authority, road authority, company, body, or person shall be subject to the following restrictions; (that is to say.)

1. They shall cause as little detriment or inconvenience to the promoters and lessees as circumstances admit:
2. Before they commence any work whereby the traffic on the tramway will be interrupted they shall (except in cases of urgency, in which cases no notice shall be necessary) give to the promoters and lessees, if there be any, notice of their intention to commence such work, specifying the time at which they will begin to do so, such notice to be given eighteen hours at least before the commencement of the work:
3. They shall not be liable to pay to the promoters or lessees any compensation for injury done to the tramway by the execution of such work, or for loss of traffic occasioned thereby, or for the reasonable exercise of the powers so vested in them as aforesaid:
4. Whenever for the purpose of enabling them to execute such work the local authority or the road authority shall so require, the promoters or lessees shall either stop traffic on the tramway to which the notice



shall refer, where it would otherwise interfere with such work, or shore up and secure the same at their own risk and cost during the execution of the work there: Provided that such work shall always be completed by the local authority or the road authority, as the case may be, with all reasonable expedition:

5. Any company, body, or person shall not execute such work so far as it immediately affects the tramway except under the superintendence of the promoters, unless they refuse or neglect to give such superintendence at the time specified in the notice for the commencement of the work or discontinue the same during the progress of the work; and they shall execute such work at their own expense, and to the reasonable satisfaction of the promoters: Provided that any additional expense imposed upon them by reason of the existence of the tramway in any road or place where any such mains, pipes, tubes, wires, or apparatus shall have been laid before the construction of such tramway shall be borne by the promoters.

33. If any difference arises between the promoters or lessees on the one hand and any local authority or road authority, or any gas or water company, or any company, body, or person to whom any sewer, drain, tube, wires, or apparatus for telegraphic or other purposes may belong, or any other company, on the other hand, with respect to any interference or control exercised, or claimed to be exercised, by them or him, or on their or his behalf, or by the promoters or lessees by virtue of this Act, in relation to any tramway or work, or in relation to any work or proceeding of the local authority, road authority, body, company, or person, or with respect to the propriety of or the mode of execution of any work relating to any tramway, or with respect to the amount of any compensation to be made by or to the promoters or lessees, or on the question whether any work is such as ought reasonably to satisfy the local authority, road authority, body, company, or person concerned, or with respect to any other subject or thing regulated by or comprised in this Act, the matter in difference shall (unless otherwise specially provided by this Act) be settled by an engineer or other fit person nominated as referee by the Board of Trade on the application of either party, and the expenses of the reference shall be borne and paid as the referee directs.

### PART III.

#### GENERAL PROVISIONS.

##### *Carriages.*

34. The promoters of tramways authorised by special Act and their lessees may use on their tramways carriages with flange wheels, or wheels suitable only to run on the rail prescribed by such Act; and, subject to the provisions of such special Act and of this Act, the promoters and their lessees shall have the exclusive use of their tramways for carriages with flange wheels or other wheels suitable only to run on the prescribed rail.

All carriages used on any tramway shall be moved by the power prescribed by the special Act, and where no such power is prescribed, by animal power only.

No carriage used on any tramway which is hereafter authorised by special Act shall extend beyond the outer edge of the wheels of such carriage more than eleven inches on each side.

##### *Licenses to use Tramways.*

35. If at any time after any tramway or part of any tramway shall have been for three years opened for public traffic in any district it shall be represented in writing to the Board of Trade by the local authority of such district or by twenty inhabitant ratepayers of such district, or by the road authority of any road in which such tramway or part of a tramway is laid, that the public are deprived of the full benefit of the tramway, the Board of Trade may (if they consider that, *prima facie*, the case is one for inquiry) direct an inquiry by a referee under this Act into the truth of the representation, and if the referee report that the truth of the representation has been proved to his satisfaction, the Board may from time to time grant licenses to any company or person to use such tramway in addition to the promoters or their lessees, for such traffic as is authorised by the special Act, with carriages to be approved by the Board, subject to the following provisions, conditions, and restrictions; that is to say,

1. The license shall be for any period not less than one year nor more than three years from the date of the license, but shall be renewable by the Board, if they upon inquiry think fit:
2. The license shall be to use the whole of such tramway for the time being opened for public traffic, or such part or parts of such tramway as the Board, having reference to the cause for granting the license, shall think right:
3. The license shall direct the number of carriages which the licensee or licensees shall run upon such tramway, and the mode in



which and times at which such carriages shall be run :

4. The licensee shall specify the tolls to be paid to the promoters or to their lessees by the licensee or licensees for the use of the tramways :
5. The licensee or licensees, and their officers and servants, shall permit one person duly authorised for that purpose by the promoters, or by their lessees, to ride free of charge in or upon each carriage of the licensee or licensees run upon the tramways for the whole or any part of the journey :
6. The Board of Trade may at any time after the granting of any license revoke, alter, or modify the same for good cause shown to them.

36. If on demand any licensee fail to pay the tolls due in respect of any passengers carried in any carriage it shall be lawful for the promoters or their lessees, to whom the same are payable, to detain and sell such carriage, or if the same shall have been removed from the tramway or premises of such promoters or lessees, to detain and sell any other carriages on such tramway or premises belonging to such licensee, and out of the moneys arising from such sale to retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus (if any) of such moneys and such of the carriages as shall remain unsold to the person entitled thereto.

37. Every licensee shall on demand give to an officer or servant authorised in that behalf by the promoters or their lessees entitled to be paid tolls by such licensee, an exact account in writing signed by such licensee of the number of passengers conveyed by any and every carriage used by him on the tramways.

38. If any such licensee fails to give such account to such officer or servant demanding the same as aforesaid, or if any such licensee with intent to avoid the payment of any tolls gives a false account, he shall for every such offence forfeit to the promoters, or to their lessees entitled to be paid tolls by such licensee, a sum not exceeding five pounds, and such penalty shall be in addition to any tolls payable in respect of the passengers carried by any such carriage.

39. If any dispute arise concerning the amount of the tolls due to the promoters or to their lessees from any licensee, or concerning the charges occasioned by any detention or sale of any carriage under the provisions herein contained, the same shall be settled in England by two justices, and in Scotland by the sheriff or two justices, and it shall be lawful for the promoters or their lessees

in the meanwhile to detain the carriage, or (if the case so require) the proceeds of the sale thereof.

40. Every licensee shall be answerable for any trespass or damage done by his carriages or horses, or by any of the servants or persons employed by him, to or upon the tramway, or to or upon the property of any other person, and, without prejudice to the right of action against the licensee or any other person, every such servant or other person may lawfully be convicted of such trespass or damage in England before two justices, and in Scotland before the sheriff or two justices, either by the confession of the party offending or by the oath of some credible witness; and upon such conviction every such licensee shall pay to the promoters, lessees, or persons injured, as the case may be, the damage, to be ascertained by such justices, so that the same do not exceed fifty pounds.

#### *Discontinuance of Tramways.*

41. If at any time after the opening of any tramway in any district for traffic the promoters discontinue the working of such tramway, or of any part thereof, for the space of three calendar months (such discontinuance not being occasioned by circumstances beyond the control of such promoters, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control), and such discontinuance is proved to the satisfaction of the Board of Trade, the said Board, if they think fit, may by order declare that the powers of the promoters in respect of such tramway or the part thereof so discontinued shall, from the date of such order, be at an end, and thereupon the said powers of the promoters shall cease and determine, unless the same are purchased by the local authority in manner by this Act provided. Where any such order has been made, the road authority of such district may at any time after the expiration of two months from the date of such order, under the authority of a certificate to that effect by the Board of Trade, remove the tramway or part of the tramway so discontinued, and the promoters shall pay to the road authority the cost of such removal and of the making good of the road by the road authority, such cost to be certified by the clerk for the time being, or by some other authorised officer of the road authority, whose certificate shall be final and conclusive; and if the promoters fail to pay the amount so certified within one calendar month after delivery to them of such certificate or a copy thereof, the road authority may, without any previous notice to the promoters (but without prejudice to any other remedy which they may have for the recovery of the amount), sell and dispose of the materials of the tramway or part of tramway removed, either by public auction or private sale,

and for such sum or sums, and to such person or persons, as the road authority may think fit, and may out of the proceeds of such sale pay and reimburse themselves the amount of the cost certified as aforesaid and of the cost of sale, and the balance (if any) of the proceeds of the sale shall be paid over by the road authority to the promoters.

*Insolvency of Promoters.*

42. If at any time after the opening of any tramway in any district for traffic, it appears to the local authority or the road authority of such district that the promoters of such tramway are insolvent, so that they are unable to maintain such tramway, or work the same with advantage to the public, and such road authority makes a representation to that effect to the Board of Trade, the Board of Trade may direct an inquiry by a referee into the truth of the representation, and if the referee shall find that the promoters are so insolvent as aforesaid, the Board of Trade may, by order, declare that the powers of the promoters shall, at the expiration of six calendar months from the making of the order, be at an end, and the powers of the promoters shall cease and determine at the expiration of the said period, unless the same are purchased by the local authority in manner by this Act provided; and thereupon such road authority may remove the tramway in like manner and subject to the same provisions as to the payment of the costs of such removal, and to the same remedy for recovery of such costs, in every respect as in cases of removal under the next preceding section.

*Purchase of Tramways.*

43. Where the promoters of a tramway in any district are not the local authority, the local authority, if, by resolution passed at a special meeting of the members constituting such local authority, they so decide, may within six months after the expiration of a period of twenty-one years from the time when such promoters were empowered to construct such tramway, and within six months after the expiration of every subsequent period of seven years, or within three months after any order made by the Board of Trade under either of the two next preceding sections, with the approval of the Board of Trade, by notice in writing require such promoters to sell, and thereupon such promoters shall sell to them their undertaking, or so much of the same as is within such district, upon terms of paying the then value (exclusive of any allowance for past or future profits of the undertaking, or any compensation for compulsory sale, or other consideration whatsoever) of the tramway, and all lands, buildings, works, materials, and plant of the promoters suitable to and used by them for the purposes of their undertaking within such

district, such value to be in case of difference determined by an engineer or other fit person nominated as referee by the Board of Trade on the application of either party, and the expenses of the reference to be borne and paid as the referee directs. And when any such sale has been made, all the rights, powers, and authorities of such promoters in respect to the undertaking sold, or where any order has been made by the Board of Trade under either of the next preceding sections, all the rights, powers, and authorities of such promoters previous to the making of such order in respect to the undertaking sold, shall be transferred to, vested in, and may be exercised by the authority to whom the same has been sold, in like manner as if such tramway was constructed by such authority under the powers conferred upon them by a Provisional Order under this Act, and in reference to the same they shall be deemed to be the promoters.

No such resolution shall be valid unless a month's previous notice of the meeting, and of the purpose thereof, has been given in manner in which notices of meetings of such local authority are usually given, nor unless two thirds of the members constituting such local authority are present and vote at the meeting, and a majority of those present and voting concur in the resolution; provided that if in Scotland the local authority be the road trustees, it shall not be necessary that two thirds of such trustees shall be present at the meeting, but the resolution shall not be valid unless two thirds of the members present vote in favour of such resolution, and unless the said resolution is confirmed in like manner at another meeting called as aforesaid, and held not less than three weeks and not more than six weeks thereafter; and it shall be lawful for the chairman of any such meeting, with the consent of a majority of the members present, to adjourn the same from time to time.

The local authority in any district may pay the purchase money and all expenses incurred by them in the purchase of any undertaking under the authority of this section out of the like rate, and shall have the like powers to borrow on the security of the same as if such expenses were incurred in applying for, obtaining, and carrying into effect any Provisional Order obtained by them under this Act.

Where the local rate is limited by law to a certain amount, and is by reason of such limitation insufficient for the payment of such purchase money and expenses, the Board of Trade may by Provisional Order extend the limit of such local rate to such amount as they shall think fit and prescribe for the payment of such purchase money and expenses.

Every such Provisional Order shall be confirmed in like manner as a Provisional Order under the authority of Part I. of this Act, and

until such confirmation such Provisional Order shall not have any operation.

Subject and according to the preceding provisions of this section two or more local authorities may jointly purchase any undertaking or so much of the same as is within their districts.

44. Where any tramway in any district has been opened for traffic for a period of six months the promoters may, with the consent of the Board of Trade, sell their undertaking to any person, persons, corporation, or company, or to the local authority of such district; and when any such sale has been made all the rights, powers, authorities, obligations, and liabilities of such promoters in respect to the undertaking sold shall be transferred to, vested in, and may be exercised by, and shall attach to the person, persons, corporation, company, or local authority to whom the same has been sold, in like manner as if such tramway was constructed by such person, persons, corporation, company, or local authority under the powers conferred upon them by special Act, and in reference to the same they shall be deemed to be the promoters.

Provided always, that a local authority shall not purchase any undertaking under the provisions of this section unless they shall decide to make such purchase by resolution passed at a special meeting of the members constituting such local authority, which resolution shall be made in the same manner and shall be subject to the same conditions as to validity as resolutions made in regard to the purchases by the next preceding section authorised.

Where any purchase is made by any local authority under the provisions of this section, such local authority may pay the purchase money and all expenses incurred by them in making such purchase out of the like funds, and for such purposes shall have all the like powers and be subject to all the like conditions as if such purchase were made under the authority of the next preceding section.

#### *Tolls.*

45. The promoters or lessees of a tramway authorised by special Act may demand and take, in respect of such tramway, tolls and charges not exceeding the sums specified in such special Act, subject and according to the regulations therein specified. A list of all the tolls and charges authorised to be taken shall be exhibited in a conspicuous place inside and outside each of the carriages used upon the tramways.

#### *Byelaws.*

46. Subject to the provisions of the special Act authorising any tramway and this Act,

The local authority of any district in which

the same is laid down may, from time to time, make regulations as to the following matters:

The rate of speed to be observed in travelling upon the tramway:

The distances at which carriages using the tramway shall be allowed to follow one after the other:

The stopping of carriages using the tramway:

The traffic on the road in which the tramway is laid.

The promoters of any tramway and their lessees may from time to time make regulations,—

For preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to them:

For regulating the travelling in or upon any carriage belonging to them.

And for better enforcing the observance of all or any of such regulations, it shall be lawful for such local authority and promoters respectively to make byelaws for all or any of the aforesaid purposes, and from time to time repeal or alter such byelaws, and make new byelaws, provided that such byelaws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect.

Notice of the making of any byelaw under the provisions of this Act shall be published by the local authority or the promoters making the same by advertisement, according to the regulations contained in Part II. of the schedule (C.) to this Act annexed, and unless such notice is published in manner aforesaid such byelaw shall be disallowed by the Board of Trade.

No such byelaw shall have any force or effect which shall be disallowed by the Board of Trade within two calendar months after a true copy of such byelaw shall have been laid before the Board, and a true copy of every such proposed byelaw shall, not less than two calendar months before such byelaw shall come into operation, be sent to the Board of Trade, and shall be delivered to the promoters of such tramway if the same was made by the local authority, and to such local authority if made by the promoters.

47. Any such byelaw may impose reasonable penalties for offences against the same, not exceeding forty shillings for each offence, with or without further penalties for continuing offences, not exceeding for any continuing offence ten shillings for every day during which the offence continues; but all byelaws shall be so framed as to allow in every case part only of the maximum penalty being ordered to be paid.

48. The local authority shall have the like power of making and enforcing rules and regulations, and of granting licenses with respect to all carriages using the tramways, and to all drivers, conductors, and other persons having

charge of or using the same, and to the standings for the same, as they are for the time being entitled to make, enforce, and grant with respect to hackney carriages, and the drivers and other persons having the charge thereof, and to the standings for the same in the streets and district of or under the control of the local authority: Provided always, that in any district in which any of the powers aforesaid in relation to hackney carriages and the matters aforesaid in connexion therewith are vested in any authority other than the local authority of such district, such authority shall have and may exercise the powers by this section conferred upon the local authority.

#### *Offences.*

49. If any person wilfully obstructs any person acting under the authority of any promoters in the lawful exercise of their powers in setting out or making, forming, laying down, repairing, or renewing a tramway, or defaces or destroys any mark made for the purposes of setting out the line of the tramway, or damages or destroys any property of any promoters, lessees, or licensees, he shall for every such offence be liable to a penalty not exceeding five pounds.

50. If any person, without lawful excuse (the proof whereof shall lie on him), wilfully does any of the following things; (namely,)

Interferes with, removes, or alters any part of a tramway or of the works connected therewith;

Places or throws any stones, dirt, wood, refuse, or other material on any part of a tramway;

Does or causes to be done anything in such manner as to obstruct any carriage using a tramway, or to endanger the lives of persons therein or thereon;

Or knowingly aids or assists in the doing of any such thing;

he shall for every such offence be liable (in addition to any proceedings by way of indictment or otherwise to which he may be subject) to a penalty not exceeding five pounds.

51. If any person travelling or having travelled in any carriage on any tramway avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance knowingly and wilfully proceeds in any such carriage beyond such distance, and does not pay the additional fare for the additional distance, or attempts to avoid payment thereof, or if any person knowingly and wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit such carriage, every such person shall, for every such offence, be liable to a penalty not exceeding forty shillings.

52. It shall be lawful for any officer or servant of the promoters or lessees of any tramway, and

all persons called by him to his assistance, to seize and detain any person discovered either in or after committing or attempting to commit any such offence as in the next preceding section is mentioned, and whose name or residence is unknown to such officer or servant, until such person can be conveniently taken before a justice, or until he be otherwise discharged by due course of law.

53. No person shall be entitled to carry or to require to be carried on any tramway any goods which may be of a dangerous nature, and if any person send by any tramway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant with whom the same are left at the time of such sending, he shall be liable to a penalty not exceeding twenty pounds for every such offence, and it shall be lawful for such promoters or lessees to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact.

54. If any person (except under a lease from or by agreement with the promoters, or under license from the Board of Trade, as by this Act provided,) uses a tramway or any part thereof with carriages having flange wheels or other wheels suitable only to run on the rail of such tramway, such person shall for every such offence be liable to a penalty not exceeding twenty pounds.

#### *Miscellaneous.*

55. The promoters or lessees, as the case may be, shall be answerable for all accidents, damages, and injuries happening through their act or default, or through the act or default of any person in their employment by reason or in consequence of any of their works or carriages, and shall save harmless all road and other authorities, companies, or bodies, collectively and individually, and their officers and servants, from all damages and costs in respect of such accidents, damages, and injuries.

56. All tolls, penalties, and charges under this Act, or under any bylaw made in pursuance of this Act, may be recovered and enforced as follows; in England before two justices of the peace in manner directed by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Act amending the same, and in Scotland

before the sheriff or two justices as penalties under The Railways Clauses Consolidation (Scotland) Act, 1845.

57. Notwithstanding anything in this Act contained, the promoters of any tramway shall not acquire or be deemed to acquire any right other than that of user of any road along or across which they lay any tramway, nor shall anything contained in this Act exempt the promoters of any tramway laid along any turnpike road, or any other person using such tramway, from the payment of such tolls as may be levied in respect of the use of such road by the trustees thereof.

58. The trustees of any turnpike road and the promoters of any tramway proposed to be laid or laid along the same may, with the approval of the Board of Trade, enter into agreements with each other for the payment of a composition to such trustees in respect of the user of such road for such tramway and the conveyance of traffic thereon, and may with the same approval alter such agreements from time to time.

59. Nothing in this Act shall limit or interfere with the rights of any owner, lessee, or occupier of any mines or minerals lying under or adjacent to any road along or across which any tramway shall be laid to work such mines and minerals, nor shall any such owner, lessee, or occupier be liable to make good or pay compensation for any damage which may be occasioned to such tramway by the working in the usual and ordinary course of their mines or minerals.

60. Nothing in this Act shall take away or affect any power which any road authority, or the owners, commissioners, undertakers, or lessees of any railway, tramway, or inland navigation, may have by law to widen, alter, divert, or improve any road, railway, tramway, or inland navigation.

61. Nothing in this Act shall limit the powers of the local authority or police in any district to regulate the passage of any traffic along or across any road along or across which any tramways are laid down, and such authority or police may exercise their authority as well on as off the tramway, and with respect as well to the traffic of the promoters or of lessees as to the traffic of other persons.

62. Nothing in this Act or in any byelaw made under this Act shall take away or abridge the right of the public to pass along or across every or any part of any road along or across which

any tramway is laid, whether on or off the tramway, with carriages not having flange wheels or wheels suitable only to run on the rail of the tramway.

63. Every inquiry which by this Act the Board of Trade are empowered to make or direct shall be made in accordance with the following provisions:

1. The inquiry shall be held in public before an officer to be appointed in that behalf by the Board, herein-after called the referee, and whose appointment shall be by writing, which shall specify all the matters referred to him:
2. Ten days notice at the least shall be given by the referee to the parties upon whose representation the Board of Trade shall have directed the inquiry, of the time and place at which the inquiry is to be commenced:
3. The inquiry shall be commenced at the time and place so appointed, and the referee may adjourn the inquiry from time to time as may be necessary to such time and place as he may think fit:
4. The referee by summons shall, on the application of any party interested in the inquiry, require the attendance before himself, at a place and time to be mentioned in the summons, of any person to be examined as a witness before him, and every person summoned shall attend the referee, and answer all questions touching the matter to be inquired into, and any person who wilfully disobeys any such summons or refuses to answer any question put to him by such referee for the purposes of the said inquiry shall be liable to a penalty not exceeding five pounds: Provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him, and no person shall be required in any case in obedience to any such summons to travel more than ten miles from his place of abode:
5. The referee may and shall administer an oath, or an affirmation where an affirmation in lieu of an oath would be admitted in a court of justice, to any person tendered or summoned as a witness on the inquiry:
6. Any person who upon oath or affirmation wilfully gives false evidence before the referee shall be deemed guilty of perjury:
7. The referee shall make his report to the Board of Trade in writing, and shall deliver copies of the report upon request to all or any of the parties to the inquiry.

64. The Board of Trade may from time to time make, and, when made, may rescind, annul, or add to, rules with respect to the following matters :

1. The proceedings to be had before the Board under this Act :
2. The payment of money or lodgment of securities by way of deposits, the repayment and forfeiture of the same, the investment of the same, the amount and payment of interest or dividends from time to time accruing due on such deposits :
3. The plans and sections of any works to be deposited by promoters under this Act :

4. As to any other matter of thing in respect of which it may be expedient to make rules for the purpose of carrying this Act into execution.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

#### SCHEDULE A.

##### PART I.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.
<b>ENGLAND AND WALES.</b>		
The city of London and the liberties thereof.	The Mayor, Aldermen, and Commons of the City of London.	The consolidated sewers rate.
The metropolis (1.) - - -	The Metropolitan Board of Works.	The metropolitan consolidated rate.
Boroughs (2.) - - -	The mayor, aldermen, and burgesses, acting by the council.	The borough fund or other property applicable to the purposes of a borough rate, or the borough rate.
Any place not included in the above descriptions, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any Local Act with powers of improving, cleansing, or paving any town.	The commissioners, trustees, or other persons intrusted by the Local Act with powers of improving, cleansing, or paving the town.	Any rate leviable by such commissioners, trustees, or other persons, or other funds applicable by them to the purposes of improving, cleansing, or paving the town.
Any place not included in the above descriptions, and within the jurisdiction of local board constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts.	The local board - - -	General district rate.
Any place or parish not within the above descriptions, and in which a rate is levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.	The poor rate.

#### Notes.

(1.) "The metropolis" shall include all parishes and places in which the Metropolitan Board of Works have power to levy a main drainage rate, except the city of London and the liberties thereof.

(2.) "Borough" shall mean any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intitled "An Act to provide for the Regulation of Municipal Corporations in England and Wales."

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.
<b>SCOTLAND.</b>		
Places within the jurisdiction of any town council, and not subject to the separate jurisdiction of police commissioners or trustees.	The town council.	The prison assessment or police assessment as the local authority shall resolve.
In places within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any General or Local Act.	The police commissioners or trustees.	
In any parish or part thereof over which the jurisdiction of a town council or of police commissioners or trustees exercising the functions of police commissioners does not extend.	The road trustees having the management of any road on which a tramway is proposed to be constructed.	The tolls, duties, and assessments leviable by the road trustees.

**PART II.**

Districts of Road Authorities.	Description of Road Authority of Districts set opposite its Name.
Parishes within the metropolis (1.) mentioned in schedule (A.) to the Metropolis Management Act, 1855.	The vestries appointed for the purposes of the Metropolis Management Act, 1855.
Districts within the metropolis (1.) formed by the union of the parishes mentioned in schedule (B.) to the Metropolis Management Act, 1855.	The board of works for the district appointed for the purpose of the Metropolis Management Act, 1855.

*Note (1.)—The term "Metropolis" has in this Part the same meaning as in Part I. of this schedule.*

**PART III.**

*Approval of Application by Local Authority for a Provisional Order.*

The approval of any intended application for a Provisional Order by a local authority shall be in manner following; that is to say,

A resolution approving of the intention to make such application shall be passed at a special meeting of the members constituting such local authority.

Such special meeting shall not be held unless a month's previous notice of the same, and of the purpose thereof, has been given in

manner in which notices of meetings of such local authority are usually given.

Such resolution shall not be passed unless two thirds of the members constituting such local authority are present and vote at such special meeting and a majority of those present and voting concur in the resolution; provided that if in Scotland the local authority be the road trustees, it shall not be necessary that two thirds of such trustees shall be present at the meeting, but the resolution shall not be valid unless two thirds of the members present vote in favour of such resolution, and unless the said re-

solution is confirmed in like manner at another meeting called as aforesaid and held not less than three weeks and not more than six weeks thereafter. Where any such resolution relating to the Metropolis as the same is defined in Part I. of this schedule, or to any district in Scotland of which road trustees are the local authority, has been passed in manner aforesaid, the intended application to which such resolution relates shall be deemed to be approved.

### SCHEDULE B.

#### PROVISIONAL ORDERS.

##### PART I.

*Advertisement in October or November of intended application.*

(1.) Every advertisement is to contain the following particulars:

1. The objects of the intended application.
2. A general description of the nature of the proposed works, if any.
3. The names of the townlands, parishes, townships, and extra-parochial places in which the proposed works, if any, will be made.
4. The times and places at which the deposit under Part II. of this schedule will be made.
5. An office, either in London or at the place to which the intended application relates, at which printed copies of the draft Provisional Order, when deposited, and of the Provisional Order, when made, will be obtainable as herein-after provided.

(2.) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.

(3.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed undertaking, where the proposed works (if any) will be made; or if there be no such newspaper, then in some one and the same newspaper published in the county in which every such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(4.) The advertisement is also, in every case, to be inserted once at least in the London or Edinburgh Gazette, accordingly as the district is situate in England or Scotland.

##### PART II.

*Deposit on or before 30th November.*

(1.) The promoters are to deposit—

1. A copy of the advertisement published by them.
2. A proper plan and section of the proposed works, if any, such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf.

(2.) The documents aforesaid are to be deposited for public inspection—

In England, in the office of the clerk of the peace for every county, riding, or division, and of the parish clerk of every parish and the office of the local authority of every district in or through which any such undertaking is proposed to be made; in Scotland, in the office of the principal sheriff clerk for every county, district, or division which will be affected by the proposed undertaking, or in which any proposed new work will be made.

(3.) The documents aforesaid are also to be deposited at the office of the Board of Trade.

##### PART III.

*Deposit on or before 23rd December.*

(1.) The promoters are to deposit at the office of the Board of Trade—

1. A memorial signed by the promoters, headed with a short title descriptive of the undertaking (corresponding with that at the head of the advertisement), addressed to the Board of Trade, and praying for a Provisional Order.
2. A printed draft of the Provisional Order as proposed by the promoters, with any schedule referred to therein.
3. An estimate of the expense of the proposed works, if any, signed by the persons making the same.

(2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement; such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.

(3.) The memorial of the promoters (to be written on foolscap paper, bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require:

[*Short title of undertaking.*]

To the Board of Trade,

The memorial of the promoters of [*short title of undertaking*]:

Showeth as follows;

1. Your memorialists have published, in ac-



cordance with the requirements of the Tramways Act, 1870, the following advertisement:

[*Here advertisement to be set out verbatim.*]

2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and [*here state deposit of the several matters required by Act*].

Your memorialists, therefore, pray that a Provisional Order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

A.B.  
C.D.  
Promoters.

#### PART IV.

##### *Deposit and advertisement of Provisional Order when made.*

(1.) The promoters are to deposit printed copies of the Provisional Order, when settled and made, for public inspection in the offices of clerks of the peace and sheriff clerks, where the documents required to be deposited by them under Part II. of this schedule were deposited.

(2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of not more than each.

(3.) They are also to publish the Provisional Order as an advertisement once in the local newspaper in which the original advertisement of the intended application was published, or, in case the same shall no longer be published, in some other newspaper published in the district.

#### SCHEDULE C.

##### PART I.

##### *Notice and Deposit of Lease by Local Authority.*

One month before any lease is submitted to the Board of Trade, notice of the intention to make such lease shall be given by advertisement.

(1.) Every advertisement is to contain—

1. The term of the lease.
2. The rent reserved.
3. A general description of the covenants and conditions contained therein.
4. The place where the same is deposited for public inspection.

(2.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed lease; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(3.) The advertisement is also, in every case, to be inserted once at least in the London or Edinburgh Gazette, accordingly as the district to which it relates is situate in England or Scotland.

##### *Deposit.*

A copy of such lease shall be deposited for public inspection during office hours at the office of the local authority or at some other convenient place within the district to which such lease relates.

#### PART II.

##### *Notice of Byelaws.*

Within one month after the making of any byelaw notice of the making of the same, and a copy of such byelaw, shall be published by advertisement in manner following:

(1.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by such byelaw; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(2.) The advertisement is also, in every case, to be inserted once at least in the London or Edinburgh Gazette, accordingly as the district to which it relates is situate in England or Scotland.

## CHAP. 79.

*The Post Office Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
  2. *Interpretation of terms.*
  3. *Channel Islands and Isle of Man.*
  4. *Repeal and limitation of enactments.*
  5. *Allowance for newspaper stamps on hand.*
  6. *Certain publications to be deemed newspapers.*
  7. *Registration of newspapers at Post Office.*
  8. *Postage on newspapers, book and pattern or sample packets and cards.*
  9. *Post Office regulations.*
  10. *Saving for parliamentary proceedings.*
  11. *Newspapers under arrangement or convention.*
  12. *Colonial and foreign postage of newspapers.*
  13. *Colonial and foreign book, &c. post.*
  14. *Decision as to newspapers, packets, &c.*
  15. *Newspapers, &c. sent not in conformity with Act, &c.*
  16. *Application to book packets, &c. of enactments as to post letters.*
  17. *Despatch and delivery of book packets, &c.*
  18. *Provision for stamps, &c.*
  19. *Prohibition of user of embossed or impressed stamps removed from paper, &c.*
  20. *Prohibition of sending indecent articles, &c. by post.*
  21. *Proof of Post Office regulations, &c.*
- Schedules.*

An Act for further regulation of Duties of Postage, and for other purposes relating to the Post Office.

(9th August 1870.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as The Post Office Act, 1870.

2. In this Act—

“The Treasury” means the Commissioners of Her Majesty's Treasury or two of them:

“Treasury warrant” means a warrant under the hands of the Treasury:

“The Postmaster General” means Her Majesty's Postmaster General:

“Post Office regulations” means regulations made by the Postmaster General.

3. For the purposes of this Act, the Channel Islands and the Isle of Man shall be deemed parts of the United Kingdom.

4. The enactments described in the first schedule to this Act shall, from and immediately after

the thirtieth day of September one thousand eight hundred and seventy, be repealed; but that repeal shall not affect the past operation of any of those enactments, or the force or operation of any Treasury warrant or Post Office regulations made, or the validity or invalidity of anything done or suffered, or any right, title, obligation, or liability accrued, before that repeal takes effect; nor shall this Act interfere with the prosecution or institution of any proceeding in respect of any right, title, obligation, or liability accrued under, or any offence committed against, or any penalty or forfeiture incurred under, any of those enactments before that repeal takes effect; and section four of and schedule (A.) to the Act first described in the first schedule to this Act, or either of them, shall not be deemed to contain or affect the definition of a newspaper for the purposes of this Act or of any other enactment regulating the sending of newspapers by post.

b. Where any person is possessed of any newspaper stamps made useless by this Act, the Commissioners of Inland Revenue, on application within six months after the thirtieth day of September one thousand eight hundred and seventy, may cancel and make allowance for the same as in case of spoiled stamps.

6. Any publication coming within the following description shall for the purposes of this Act be

deemed a newspaper, (that is to say,) any publication consisting wholly or in great part of political or other news, or of articles relating thereto, or to other current topics, with or without advertisements; subject to these conditions—

That it be printed and published in the United Kingdom;

That it be published in numbers at intervals of not more than seven days;

That it be printed on a sheet or sheets unstitched;

That it have the full title and date of publication printed at the top of the first page, and the whole or part of the title and the date of publication printed at the top of every subsequent page.

And the following shall, for the purposes of this Act, be deemed a supplement to a newspaper, (that is to say,) a publication consisting wholly or in great part of matter like that of a newspaper, or of advertisements, printed on a sheet or sheets or a piece or pieces of paper, unstitched, or consisting wholly or in part of engravings, prints, or lithographs illustrative of articles in the newspaper; such publication in every case being published with the newspaper, and having the title and date of publication of the newspaper printed at the top of every page, or at the top of every sheet or side on which any such engraving, print, or lithograph appears.

7. The proprietor or printer of any newspaper within the description aforesaid, and the proprietor or printer of any publication which, regard being had to the proportion of advertisements to other matter therein, is not within the description aforesaid, but which was stamped as a newspaper before the passing of the Act lastly mentioned in the first schedule to this Act, may register it at the General Post Office in London, at such time in each year and in such form and with such particulars as the Postmaster General from time to time directs, paying on each registration such fee not exceeding five shillings as the Postmaster General, with the approval of the Treasury, from time to time directs.

The Postmaster General may from time to time revise the register and remove therefrom any publication not being a newspaper.

The decision of the Postmaster General on the admission to or removal from the register of a publication shall be final, save that the Treasury may, if they think fit, on the application of any person interested, reverse or modify the decision, and order accordingly.

Any publication for the time being on the register shall for the purposes of this Act be deemed a registered newspaper.

8. From and after the thirtieth day of September one thousand eight hundred and seventy:

registered newspapers, book packets, pattern or sample packets, and post cards, may be sent by post between places in the United Kingdom, at the following rates of postage:

On a registered newspaper, with or without a supplement or supplements - One halfpenny.

On each registered newspaper in a packet of two or more, with or without a supplement or supplements - One halfpenny.

On a book packet or pattern or sample packet:—  
If not exceeding two ounces in weight - One halfpenny.

If exceeding two ounces in weight, for the first two ounces and for every additional two ounces or fractional part of two ounces - One halfpenny.

On a post card - - - One halfpenny.

Provided that a packet of two or more registered newspapers with or without a supplement or supplements shall not be liable under this section to a higher rate of postage than the rate chargeable on a book packet of the same weight.

9. The Postmaster General may from time to time, with the approval of the Treasury, make, in relation respectively to registered newspapers, book packets, pattern or sample packets, and post cards, sent by post, such regulations as he thinks fit, for all or any of the following purposes:—

For prescribing and regulating the times and modes of posting and delivery:

For prescribing prepayment and regulating the mode thereof:

For regulating the affixing of postage stamps:

For prescribing and regulating the payment again of postage in case of re-direction:

For regulating dimensions and maximum weight of packets:

For regulating the nature and form of covers:

For prohibiting or restricting the printing or writing of marks or communications or words:

For prohibiting inclosures; and such other regulations as from time to time seem expedient for the better execution of this Act.

10. Nothing in this Act or in any Treasury warrant or Post Office regulations shall repeal or alter any provision of section 13, 16, or 17 of the Act secondly described in the first schedule to this Act as far as those sections relate to printed votes or proceedings of Parliament addressed to places in the United Kingdom.

11. A registered newspaper shall be deemed a newspaper for the purposes of any arrangement or convention between Her Majesty's Government and any colonial or foreign government for securing advantages for newspapers sent by post.

12. The Treasury may from time to time, by Treasury warrant, allow any newspapers, British, colonial, or foreign, to be sent by post between the United Kingdom and places out of the United Kingdom, or between places out of the United Kingdom, whether through the United Kingdom or not, at such rates of postage, not exceeding threepence for each newspaper irrespective of any colonial or foreign postage, and on such conditions, as they think fit, and according to Post Office regulations to be from time to time made in that behalf.

Any Treasury warrant and Post Office regulations made in that behalf before the passing of this Act are hereby confirmed; and the same shall continue in force unless and until altered by Treasury warrant or Post Office regulations (as the case may be).

13. The Treasury from time to time, by Treasury warrant, may regulate the sending of book packets and pattern or sample packets by post, between the United Kingdom and places out of the United Kingdom, or between places out of the United Kingdom, whether through the United Kingdom or not, and in relation thereto may prescribe rates of postage, weights, and other matters.

Any Treasury warrant and Post Office regulations made in that behalf before the passing of this Act are hereby confirmed; and the same shall continue in force unless and until altered by Treasury warrant or Post Office regulations (as the case may be).

14. If a question arises whether any publication, not being a registered newspaper, is a newspaper or a supplement, or whether any packet is a book packet or pattern or sample packet, within this Act or any Treasury warrant or Post Office regulations, the decision thereon of the Postmaster General shall be final, save that the Treasury may, if they think fit, on the application of any person interested, reverse or modify the decision, and order accordingly.

15. If any registered or other newspaper, supplement, publication, book packet, pattern or sample packet, or post card, is sent by post otherwise than in conformity with this Act or any Treasury warrant or Post Office regulations, it shall be either returned to the sender thereof or forwarded to its destination, in either case charged with such rate of postage not exceeding the letter rate of postage, or without any additional charge, as the Postmaster General, with the approval of the Treasury, from time to

time directs, having been, if necessary, detained and opened in the Post Office.

16. A book packet, pattern or sample packet, or post card sent by post shall be deemed a post letter, within the Act described in the second schedule to this Act.

17. Where the despatch or delivery from a post office of letters would be delayed by the despatch or delivery therefrom at the same time of book packets, pattern or sample packets, and post cards, or any of them, the same or any of them may, subject and according to Post Office regulations, be detained in the Post Office until the despatch or delivery next following that by which they would ordinarily be despatched or delivered.

18. The Commissioners of Inland Revenue shall from time to time provide proper dies and other implements for denoting by adhesive or embossed or impressed stamps or otherwise the duties of postage payable in the United Kingdom under this Act or any Treasury warrant thereunder.

Those duties shall be deemed stamp duties, and shall be under the management of the Commissioners of Inland Revenue.

So much of the Act secondly described in the first schedule to this Act as relates to stamp duties under that Act shall apply to the stamp duties under this Act.

A newspaper or packet sent by post and the cover thereof (if any) shall be deemed a letter or cover (as the case may be) within section twenty-three of the Act secondly described in the first schedule to this Act; and a post card shall be deemed a letter within that section, and the duties under this Act shall be deemed to be comprised in the duties in that section referred to.

19. It shall not be lawful for any person to affix to a letter, newspaper, supplement, publication, packet, or card sent by post or to the cover thereof (if any), by way of prepayment of postage thereon, an embossed or impressed stamp cut out or otherwise separated from the cover or other paper, card, or thing on which such stamp was embossed or impressed, although such stamp has not been before sent by post or used.

If any letter, newspaper, supplement, publication, packet, or card is sent by post with a stamp affixed thereto or to the cover thereof (if any) that has been so cut out or separated, the postage thereof as far as it purports to be prepaid by that stamp shall be deemed to be not prepaid.

20. The Postmaster General may from time to time with the approval of the Treasury make such regulations as he thinks fit for preventing

the sending or delivery by post of indecent or obscene prints, paintings, photographs, lithographs, engravings, books, or cards, or of other indecent or obscene articles, or of letters, newspapers, supplements, publications, packets, or post cards, having thereon, or on the covers thereof, any words, marks, or designs of an indecent, obscene, libellous, or grossly offensive character.

21. The Documentary Evidence Act, 1868, shall have effect as if the Postmaster General were mentioned in the first column, and any Secretary or Assistant Secretary of the Post Office were mentioned in the second column, of the schedule to that Act; and any approval of the Treasury under this Act shall be deemed an order within that Act.

---

### SCHEDULES.

#### THE FIRST SCHEDULE.

##### *Enactments repealed.*

6 & 7 Will. 4. c. 76. in part.	-	-	An Act to reduce the duties on newspapers, and to amend the laws relating to the duties on newspapers and advertisements -	} in part; namely,— Sections one to three (both inclusive), and sections thirty-four and thirty-five.
3 & 4 Vict. c. 96. in part.	-	-	An Act for the regulation of the duties of postage	
			Section eleven; sections thirteen, sixteen, and seventeen, as far as those three sections relate to printed votes or proceedings of Parliament, addressed to places out of the United Kingdom, or to newspapers; section forty-two; sections forty-four, forty-five, and forty-six, as far as those three sections relate to newspapers; and sections forty-seven to fifty-one (both inclusive).	
11 & 12 Vict. c. 117.	-	-	An Act for rendering certain newspapers published in the Channel Islands and the Isle of Man liable to postage.	
16 & 17 Vict. c. 63. in part.	-	-	An Act to repeal certain stamp duties, and to grant others in lieu thereof, to give relief with respect to the stamp duties on newspapers and supplements thereto, to repeal the duty on advertisements, and otherwise to amend the laws relating to stamp duties	} in part; namely,— Sections three and four.
18 & 19 Vict. c. 27.	-	-	An Act to amend the laws relating to the stamp duties on newspapers, and to provide for the transmission by post of printed periodical publications.	

---

#### THE SECOND SCHEDULE.

##### *Act referred to.*

7 Will. 4. & 1 Vict. c. 36.—An Act for consolidating the laws relative to offences against the Post Office of the United Kingdom, and for regulating the judicial administration of the Post Office laws, and for explaining certain terms and expressions employed in those laws.

## CHAP. 80.

*Census (Ireland).*

## ABSTRACT OF THE ENACTMENTS.

1. *Interpretation of terms.*
2. *Account of population to be taken.*
3. *By whom the account shall be taken.*
4. *Masters, &c. of gaols, &c. to be appointed enumerators of the inmates thereof.*
5. *Forms, &c. to be furnished for their use.*
6. *Power to make the inquiry.*
7. *Penalty for refusing to answer, or for giving false answers.*
8. *Penalty on persons employed if guilty of wilful default or neglect.*
9. *Proceedings how to be taken, and penalties recovered and applied. Application of fines and penalties imposed.*
10. *The persons taking the accounts to certify and affirm as to their correctness, and deliver them to the officer appointed to receive them. Such officer to transmit them to the office of the Chief Secretary. An abstract thereof to be laid before Parliament.*
11. *Punishment of persons wilfully making false affirmation or declaration.*

An Act for taking the Census of Ireland.  
(9th August 1870.)

WHEREAS it is expedient to take the census of Ireland in the year one thousand eight hundred and seventy-one:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In this Act,—

The term "Lord Lieutenant" shall mean the Lord Lieutenant or other chief governors of Ireland:

The terms "chief secretary" and "under secretary" shall mean respectively the chief secretary and under secretary to the Lord Lieutenant.

2. An account of the population of Ireland shall be taken at the time and in the manner herein-after directed.

3. Such officers and men of the police force of Dublin metropolis, and of the Royal Irish Constabulary, as the Lord Lieutenant shall direct, together with such other competent persons as the Lord Lieutenant shall appoint to assist therein, shall, upon Monday the third day of April and one or more next consecutive days in the year one thousand eight hundred and seventy-one as the said Lord Lieutenant shall fix, severally visit every house within such districts as may be assigned to them respectively, and take an account in writing, according to such instructions as may be given to them by the chief or under secretary of the number of persons who abode therein on

the night of Sunday the second day of April one thousand eight hundred and seventy-one, and of the sex, age, religious profession, birthplace, and occupation of all such persons; and shall also take an account of the number of inhabited houses and of uninhabited houses and of houses then building within such districts respectively; and shall also distinguish those parishes and places, or parts of parishes and places, within each district respectively, which are within the limits of any city or borough returning a member or members to serve in Parliament; and shall also take an account of all such further particulars as by such instructions they may be directed to inquire into; and all the expenses which shall be incurred by authority of such Lord Lieutenant under this Act, subject to the sanction of the Commissioners of Her Majesty's Treasury, shall be paid out of such moneys as shall be provided by Parliament for that purpose.

4. The governor, master, or keeper of every gaol, prison, or house of correction, workhouse, hospital, or lunatic asylum, and every barrack master, and every master or keeper of every public or charitable institution which shall be determined upon by the Lord Lieutenant, shall act as the enumerator of the inmates thereof, and shall be bound to conform to such instructions as shall be sent to him by the authority of the Lord Lieutenant for obtaining the returns required by this Act, so far as may be practicable with respect to such inmates.

5. For the more effectual obtaining of such accounts, the chief or under secretary shall prepare and cause to be printed such forms and instructions for the use of the several persons

who shall be appointed as aforesaid to take or certify the said accounts as he shall deem necessary.

6. The better to enable such persons to take the said accounts, they are hereby authorised and empowered to ask all such questions of all persons within their respective districts, respecting themselves or the persons constituting their respective families, and of all such further particulars as shall be necessary for the purpose of taking the said accounts.

7. Every person refusing to answer or wilfully giving a false answer to any such questions, and every person in any way wilfully obstructing such persons in the execution of the duties required of them under this Act, shall for every such refusal, false answer, or wilful obstruction, on proof thereof being made before any justice or justices at petty sessions for the district in which such person shall reside, or, if such person shall reside within the police district of Dublin metropolis, before any of the divisional justices of such district, on the testimony of one or more credible witnesses, forfeit a sum not exceeding five pounds, at the discretion of the said justice or justices before whom such complaint shall be so made.

8. Every member of the said police force or of the Royal Irish Constabulary, or other person, who shall be so appointed to take the said accounts, or to assist therein, who shall make any wilful neglect, default, or falsification in any matters relating to the said accounts, shall for every such neglect, default, or falsification, on proof thereof being made before any justice or justices at petty sessions for the district in which he shall so act, or in case such member of the police or constabulary force, or other person, shall act for the police district of Dublin metropolis, before any of the divisional justices of such district, on the testimony of one or more credible witnesses, forfeit a sum not exceeding five pounds nor less than forty shillings, at the discretion of the said justice or justices before whom such complaint shall be so made.

9. All proceedings under this Act, as to compelling the appearance of such member of the said police force or of the Royal Irish Constabulary force, or other person, or of any witness, and as to the hearing and determination of such complaints, or any other matter relating thereto, and as to the application of fines, amerciaments, and forfeited recognizances, imposed or levied under this Act at petty sessions, shall be subject in all respects to the provisions of "The Petty Sessions

(Ireland) Act, 1851," as the same is amended by "The Petty Sessions Clerk (Ireland) Act, 1858," (when the case shall be heard in any petty sessions district,) and to the provisions of the Acts relating to the divisional police offices (when the case shall be heard in the police district of Dublin metropolis), so far as the said provisions shall be consistent with any special provisions of this Act; and when any fine or penalty is imposed at any of the divisional police offices of Dublin metropolis, under the provisions of this Act, such fines and penalties shall be paid over to the same purposes and appropriated and applied in the same manner as is now by law authorised in respect of fines and penalties imposed at such divisional police offices respectively.

10. The said several persons so appointed to take the said accounts, or to assist therein, shall sign and certify the same, and make solemn affirmation before any justice of the peace within the county, to the effect that the said account has been truly and faithfully taken by him (or them), and that to the best of his (or their) knowledge the same is correct, so far as may be known, and shall deliver the same to such officer of the said police force of the Royal Irish Constabulary, or other person, as may be appointed by the Lord Lieutenant to receive the same, within each county, city, town, or place; and such officer or person shall examine the same, and cause any defect or inaccuracy which may be discovered therein to be supplied or corrected, so far as may be possible, and shall certify and transmit the same to the office of the chief or under secretary, in such manner and within such time as the Lord Lieutenant shall direct; and the same shall be digested and reduced into order under the direction of the chief or under secretary, by such persons as the Lord Lieutenant shall appoint for that purpose; and an abstract thereof shall be laid before both Houses of Parliament within twelve months after the day on which the said account shall be taken or (if Parliament be not then sitting) within the first fourteen days of the session next ensuing.

11. Every solemn affirmation or declaration made or signed under the authority of this Act shall be of the same force and effect as if the person making such affirmation or declaration had taken an oath in the usual form, so that if the person making such affirmation or declaration shall be convicted of having therein wilfully and falsely affirmed or declared any matter or thing, he shall be subject to the same pains, penalties, and forfeitures to which persons convicted of wilful perjury are subject.

## CHAP. 81.

*The Meeting of Parliament Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Summoning of Parliament.*

An Act to amend the Acts of the thirty-seventh year of King George the Third, chapter one hundred and twenty-seven, and the thirty-ninth and fortieth years of King George the Third, chapter fourteen. (9th August 1870.)

WHEREAS in pursuance of two Acts passed, the one in the thirty-seventh year of the reign of King George the Third, chapter one hundred and twenty-seven, intituled "An Act to shorten the time now required for giving notice of the Royal intention of His Majesty, his heirs and successors, that the Parliament shall meet and be holden for the despatch of business, and more effectually to provide for the meeting of Parliament in the case of a demise of the Crown," and the other in the session held in the thirty-ninth and fortieth years of the reign of King George the Third, chapter fourteen, intituled "An Act for empowering His Majesty to shorten the time for the meeting of Parliament in cases of adjournment," Parliament may be

summoned by Royal Proclamation to meet on any day not less than fourteen days from the day of the date of such proclamation, notwithstanding that Parliament was prorogued or both Houses of Parliament stood adjourned to some later day, and it is expedient to shorten the said period of fourteen days:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as "The Meeting of Parliament Act, 1870."

2. Parliament may be summoned by a Royal Proclamation in manner provided by the recited Acts, to meet on any day not less than six days from the day of the date of such proclamation, and the recited Acts, so far as they relate to such summoning of Parliament, shall be construed as if six days were therein substituted for fourteen days.

## CHAP. 82.

*The Canada Defences Loan Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Power to Treasury to guarantee loan.*
3. *Conditions of guarantee.*
4. *Application of sinking fund.*
5. *Alteration of Act relating to guaranteed loan.*
6. *Issue out of Consolidated Fund.*
7. *Certificate of amount paid out of Consolidated Fund.*
8. *Accounts to be laid before Parliament.*



An Act to authorise the Commissioners of Her Majesty's Treasury to guarantee the payment of a loan to be raised by the Government of Canada for the construction of fortifications in that country.  
(9th August 1870.)

WHEREAS by an Act of the Parliament of Canada of the year 1868, chapter forty-one, the Governor in Council was authorised to raise by way of loan upon the guarantee of the Commissioners of Her Majesty's Treasury (in this Act referred to as "the Treasury"), for the purpose of the construction of the fortifications therein mentioned, sums not exceeding one million one hundred thousand pounds, and the sums so raised, with the interest thereon, and such sums as might be necessary to repay the said loan, either by way of a sinking fund, not exceeding one per cent., or in such other way and subject to such conditions as the Governor in Council, with the assent of the Treasury, might determine, were charged on the Consolidated Revenue Fund of Canada next after the appropriation for the construction of the Intercolonial Railway :

And whereas it is expedient to authorise the Treasury to give such guarantee :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as "The Canada Defence Loan Act, 1870."

2. The Treasury may guarantee, in such manner and form as they think fit, the payment of the principal of any loan raised by the Government of Canada in pursuance of the said Act, and of interest thereon at a rate not exceeding four per cent.

3. The Treasury shall not give any guarantee under this Act unless and until provision is made to the satisfaction of the Treasury—

- (1.) For the due payment, custody, and application of the money raised by the loan, in such manner as the Treasury from time to time direct :
- (2.) For remitting to the Treasury the annual sums for the sinking fund by equal half-yearly payments, in such manner as the Treasury from time to time direct, and for the investment and accumulation thereof, under their direction, in the names of four trustees nominated from time to time, two

by the Treasury and two by the Government of Canada.

4. The said sinking fund may be invested only in such securities as the Government of Canada and the Treasury from time to time agree upon, and shall, whether invested or not, be applied from time to time, under the direction of the Treasury, in discharging the principal of the said loan; and the interest arising from such securities (including the interest accruing in respect of any part of the loan discharged by means of the sinking fund), and the resulting income thereof, shall be invested and applied as part of such sinking fund.

5. Every Act passed by the Parliament of Canada which in any way impairs the priority of the charge upon the Consolidated Revenue Fund of Canada created by that Parliament of the said loan and the interest and sinking fund thereof, and the sums paid out of the Consolidated Fund of the United Kingdom, and the interest thereon, shall, so far only as it impairs such priority, be void, unless such Act has been reserved for the signification of Her Majesty's pleasure.

6. The Treasury are hereby authorised to cause to be issued from time to time out of the growing produce of the Consolidated Fund of the United Kingdom such sums of money as may at any time be required to be paid to fulfil the guarantee under this Act in respect either of principal or interest.

7. The Treasury may from time to time certify to one of Her Majesty's Principal Secretaries of State the amount which has been paid out of the Consolidated Fund of the United Kingdom to fulfil the guarantee under this Act, and the date of such payment; such certificate shall be communicated to the Governor of Canada, and shall be conclusive evidence of the amount having been so paid and of the time when the same was so paid.

8. The Treasury shall cause to be prepared, and laid before both Houses of Parliament, a statement of any guarantee given under this Act, and an account of all sums issued out of the Consolidated Fund of the United Kingdom for the purposes of this Act within one month after the same are so given or issued, if Parliament be then sitting, or if Parliament be not sitting, then within fourteen days after the then next meeting of Parliament.

## CHAP. 83.

*Constabulary (Ireland) Amendment Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Present police force in Londonderry shall cease to exist.*
2. *Borough of Londonderry constituted a distinct district.*
3. *Lord Lieutenant to add any number of men, not exceeding forty-five, to the constabulary force of Londonderry.*
4. *As to expenses of additional force.*
5. *Inspector General shall transmit to town council of Londonderry half-yearly accounts.*
6. *Inspector General to appoint constables for night watch, who shall receive extra remuneration for night duty.*
7. *Restrictions as to age.*
8. *Superannuation, &c. of constabulary.*
9. *Provisions as to rates applicable to support of police establishment to continue in force.*
10. *Power to Lord Lieutenant to vary number of constables, &c. for each county, &c.*
11. *Amendment of 28 & 29 Vict. c. 70.*
12. *Power to Lord Lieutenant to revise salaries for constabulary force.*
13. *Power to appoint veterinary surgeon.*
14. *This Act and Acts relating to constabulary force to be construed as one.*
15. *Interpretation of terms.*
16. *Commencement of Act.*
17. *Short title.*

**An Act to make better provision for the Police Force in the City of Londonderry, and to amend the Acts relating to the Royal Irish Constabulary Force.**  
(9th August 1870.)

WHEREAS the Lord Lieutenant of Ireland did, on the eleventh day of August one thousand eight hundred and sixty-nine, issue his warrant to certain commissioners, directing them to hold a court of inquiry at Londonderry, and to report upon the existing local arrangements for the preservation of the peace of that borough, the magisterial jurisdiction exercised within it, and the amount and constitution and efficiency of the police force usually available there, and other matters relating thereto: And whereas the said commissioners, having duly inquired into the said several matters as directed by the said warrant, have made their report thereon, dated the thirtieth day of November last, stating that the police arrangements of the borough need complete alteration: And whereas it is expedient that the police force maintained by the town council of the borough of Londonderry should cease to exist, and that with a view to provide for the more effectual preservation of the peace of the said borough a constabulary force should be appointed to be stationed therein: And whereas it is expedient to amend the Acts relating to the Royal Irish constabulary:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. From and after the commencement of this Act, it shall not be lawful for the town council of the borough of Londonderry to appoint or maintain any police force; and all persons who have been appointed superintendent, sergeants, or constables of the said force shall cease to hold their offices, and shall severally discontinue acting in such offices accordingly; and the Royal Irish constabulary force appointed to do duty in the city of Londonderry shall have and discharge all powers and duties now lawfully had and discharged by the police force of the borough.

2. The municipal borough of Londonderry shall for the purposes of this Act be constituted a distinct district, herein-after called the city of Londonderry; and all and every the provisions of the several Acts relating to the Royal Irish constabulary shall apply to the city of Londonderry.

3. It shall be lawful for the Lord Lieutenant to appoint as the constabulary force in the city of Londonderry a number of constables and sub-constables not exceeding thirty, and to add to the said constabulary force under the provisions of

this Act any number of men, not exceeding forty-five, which the Lord Lieutenant may think fit to provide for the more effectual preservation of the peace of the said city, and such additional number of men, together with the thirty herein-before mentioned, shall constitute the ordinary constabulary force of the said city.

4. The expense of the said additional force, save as to the additional pay herein-after mentioned, shall, in the first instance, be advanced and defrayed in like manner as the expense of the force appointed under the Acts relating to the Royal Irish Constabulary is to be advanced and defrayed; one moiety of the moneys so advanced shall be repaid by the town council of the borough of Londonderry by means of rates, to be apportioned and levied in the same manner as the moneys hitherto raised and applied or which may be applicable in the said borough of Londonderry to the maintenance of a police force.

5. The Inspector General of constabulary shall, with the assistance of the receiver, twice in each year ascertain the amount of the moneys chargeable under the provisions of this Act to the said city of Londonderry, and shall make out a certificate thereof under his hand, specifying the force or service in respect whereof such charge may have been incurred, and transmit the same, when signed by the receiver and approved and certified by the chief or under secretary to the Lord Lieutenant, to the town clerk of the borough of Londonderry, who shall lay the same forthwith before the town council, and thereupon the town council shall forthwith make and levy a rate sufficient for the payment thereof, and shall thereout, or out of any moneys in their hands, pay the amount mentioned in such certificate to the Paymaster General's department in Ireland.

6. The Inspector General of constabulary shall fix the number of men who shall discharge the duties of a night watch, and for each of such men there shall be charged the sum of sixpence per diem, to be wholly defrayed by the town council of the borough of Londonderry, and such sum shall be included by the Inspector General of constabulary in the certificate to be furnished by him under this Act, and shall be raised and paid in manner therein directed; and it shall be lawful for the said Inspector General, with the approval of the Lord Lieutenant, to apply such sum to remunerate the constabulary force stationed in Londonderry, for discharging the duties of a night watch.

7. Notwithstanding any regulations requiring persons entering the constabulary force to be unmarried, or to be under a certain age, the Inspector General of the Royal Irish Constabulary

force may, if he shall so think fit, admit into the said force any constable of the police force at the time of the passing of this Act maintained by the town council of the borough of Londonderry, whose age shall not exceed forty years, and who within one calendar month after the commencement of this Act shall apply to be admitted, and who in other respects shall be eligible according to the said regulations.

8. It shall be lawful for the town council of the said borough of Londonderry (if they shall so think fit) to grant to the superintendent, or to any serjeant or constable belonging to the police force at the time of the passing of this Act maintained by the said town council, whose office shall cease or become unnecessary by means of the provisions of this Act, such an adequate compensation, by way of yearly allowance or other gratuity, as shall to them seem just: Provided always, that any such compensation shall be wholly charged on and defrayed by the local funds which the said town council may have authority to levy.

9. The several provisions of the local Acts in force within the borough of Londonderry relating to the apportionment, levy, collection, recovery, and receipts of rates applicable wholly or in part to the support of the police force and establishment in the police district of the city of Londonderry shall continue in force notwithstanding the passing of this Act.

10. It shall be lawful for the Lord Lieutenant, with the advice of Her Majesty's Privy Council in Ireland, within six months after the commencement of this Act, to alter or vary the number of constables and sub-constables for each county, city, or town specified in the schedule to the Constabulary (Ireland) Amendment Act, 1865, to such number as the Lord Lieutenant, with such advice as aforesaid, may consider to be required for each such county, city, or town, but so that the total number of constables and sub-constables to be distributed and allotted to all the counties, cities, and towns in the said schedule specified, together with the thirty men by this Act authorised to be appointed for the city of Londonderry, shall not exceed the total number of constables and sub-constables fixed by the schedule of the said Act.

11. So much of the schedule annexed to the Constabulary (Ireland) Amendment Act, 1865, as fixes the number of sub-inspectors at two hundred and sixty-two and of head constables at three hundred and seventy-five, shall be and the same is hereby repealed, and the numbers of those ranks respectively shall from the commencement of this Act be two hundred and

forty-four sub-inspectors and three hundred and fifty head constables for the whole of Ireland, exclusive of the reserve force, and the said inspectors and head constables of the said force may be from time to time distributed amongst the counties, cities, and towns in Ireland respectively as to the Lord Lieutenant shall seem fit.

12. Notwithstanding anything in section two of the Act passed in the twenty-ninth and thirtieth years of the reign of Her present Majesty, chapter one hundred and three, intituled "An Act to amend an Act to consolidate the law relating to the constabulary force in Ireland," it shall be lawful for the Lord Lieutenant to fix and appoint such revised annual salaries as to him may from time to time seem proper, not exceeding the several sums herein-after specified, to be paid in such manner and subject to such regulations and provisions as he may direct, to the several persons herein-after mentioned; (that is to say,)

1. To the head constable major, an annual salary not exceeding ninety pounds:
2. To each head constable of the first class, an annual salary not exceeding seventy-six pounds fourteen shillings:
3. To twelve head constables of the first class, of long service or superior merit, but ineligible for further promotion, an addition to their respective salaries of ten pounds per annum each, making their total salaries respectively eighty-six pounds fourteen shillings per annum each:
4. To each head constable of the second class, an annual salary not exceeding sixty-five pounds:
5. To twelve head constables of the second class, of long service or superior merit,

but ineligible for further promotion, an addition of ten pounds per annum, making their total salaries respectively seventy-five pounds per annum each:

6. To any number of constables, not exceeding sixty, of long service or superior merit, but ineligible for further promotion, an addition of four pounds per annum, making their total salaries respectively fifty-three pounds eight shillings per annum.

13. It shall be lawful for the Lord Lieutenant to appoint a veterinary surgeon to the Royal Irish constabulary, and such veterinary surgeon shall receive an annual salary of two hundred pounds per annum.

14. This Act and the several Acts now in force relating to the Royal Irish constabulary shall be construed as one Act, so far as is consistent with the tenor hereof, and nothing herein contained shall be construed to deprive the Lord Lieutenant of any power now vested in him in relation to the said constabulary force.

15. The expression "Lord Lieutenant" in this Act shall mean the Lord Lieutenant or other chief governor or governors of Ireland.

16. This Act shall commence from and after a day to be fixed by the Lord Lieutenant, and notified in the "Dublin Gazette," such day not being sooner than twenty-one days after such notification.

17. This Act may be cited for all purposes as the "Constabulary (Ireland) Amendment Act, 1870."

#### CHAP. 84.

#### *The Public Schools Act, 1870.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Extension of powers of new governing bodies.*
3. *Duration of powers of Commissioners.*

An Act to amend the Public Schools Act, 1868. (9th August 1870.)

WHEREAS by the Public Schools Act, 1868, certain powers of making statutes and regulations and of making and proposing schemes are vested

in the new governing bodies of the several schools to which the said Act applies;

And whereas it is provided by the said Act that all such powers shall, from and after a day named in the said Act, or such further time as may be determined by Her Majesty by Order in

Council, pass to and vest in the Special Commissioners by the said Act appointed, subject as therein mentioned; and it is further provided that the powers conferred on the said Special Commissioners by the said Act shall be in force until such day as in the said Act mentioned, or a further day to which the same may be continued by Her Majesty as therein mentioned:

And whereas the powers so vested in the new governing bodies of the said schools have been continued by Her Majesty, but will, unless Parliament otherwise provides, on and after the first day of January one thousand eight hundred and seventy-one, pass to the said Special Commissioners:

And whereas it is expedient to postpone for such further time as is herein-after mentioned the transfer of such powers as aforesaid to the said Special Commissioners, and to continue for a further time the powers of the said Special Commissioners:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "The Public Schools Act, 1870."

2. All powers by the Public Schools Act, 1868, or any Act amending the same, vested in the new governing bodies of the several schools to which the said Public Schools Act applies, shall continue vested in such new governing bodies respectively until the thirty-first day of July one thousand eight hundred and seventy-one, and from and after the said thirty-first day of July one thousand eight hundred and seventy-one, and not before, shall pass to and vest in the said Special Commissioners, subject nevertheless as in the said Act mentioned.

3. Subject to the provisions of this Act, all powers conferred on the Special Commissioners by the Public Schools Act, 1868, or any Act amending the same, shall be in force until the thirty-first day of July one thousand eight hundred and seventy-two, and it shall be lawful for Her Majesty, if she think fit, by and with the advice of her Privy Council, to continue the same until the thirty-first day of December one thousand eight hundred and seventy-two.

## CHAP. 85.

### *The Norfolk Boundary Act, 1870.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Annexation of part of hamlet of South Town to the hundred of East Flegg.*
3. *Assessment to county rate of land annexed to hundred of East Flegg.*

An Act to declare the Hundred in which a Piece of Land in the County of Norfolk is situate, and to provide for the Assessment of the said Piece of Land to the County Rate.

(9th August 1870.)

WHEREAS the greater part of the hamlet of South Town in the parish of Gorleston is situate in the county of Suffolk, but a portion of the said hamlet is situate in the county of Norfolk, and doubts have arisen whether the last-mentioned portion is included in any of the hundreds of the said county of Norfolk, and it is expedient to remove such doubts:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Com-

mons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as "The Norfolk Boundary Act, 1870."

2. So much of the hamlet of South Town in the parish of Gorleston as is situate in the county of Norfolk shall be deemed for all purposes to be within and to be part of the hundred of East Flegg in the same county.

3. The committee appointed or to be hereafter appointed in the county of Norfolk, in pursuance of the Act of the session of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter eighty-one, "to consolidate and amend the statutes relating to the assessment and collection of county rates in England and Wales," for the purpose of preparing a basis or standard

for county rate, may revise such basis or standard for the purpose of assessing that portion of the said hamlet of South Town which is in the county of Norfolk, in like manner as they may for the purpose of meeting any partial changes that may

have occurred in the rateable value of a portion of the property liable to be assessed, and all the provisions of the said Act and any Act amending the same relating to such revision shall apply accordingly.

#### CHAP. 86.

#### *Sheriffs (Scotland) Act (1853) Amendment, &c.*

##### ABSTRACT OF THE ENACTMENTS.

1. *County of Kincardine to be united to county of Aberdeen.*
2. *County of Banff to be united with counties of Aberdeen and Kincardine, and counties of Elgin and Nairn to be united with county of Inverness.*
3. *Counties of Orkney and Shetland to be united with county of Caithness, and county of Sutherland to be united with counties of Ross and Cromarty.*
4. *County of Linlithgow to be united with the county of Mid-Lothian, and the county of Kinross to be united with the county of Fife.*
5. *County of Haddington to be united with the county of Mid-Lothian, and the county of Berwick to be united with the counties of Roxburgh and Selkirk.*
6. *Sheriffdom of Mid-Lothian, Linlithgow, Haddington, and Peebles to be called the Sheriffdom of the Lothians and Peebles.*
7. *Counties of Wigtown and Kirkcudbright to be united with the county of Dumfries.*
8. *County of Dumbarton to be united with the county of Stirling, and county of Bute with the county of Renfrew.*
9. *Sheriffdom of Stirling, Dumbarton, and Clackmannan.*
10. *No separate appointments to be made to the office of sheriff of the counties to be united.*
11. *Sheriff to have no right to additional salary.*
12. *Union of counties to be complete as regards jurisdiction, &c. of sheriff, and powers, privileges, &c. of procurators.*
13. *Courts to be held and duties to be discharged by sheriffs.*
14. *Courts to be held and duties to be discharged by sheriffs substitute.*

An Act to amend and extend the Act sixteenth and seventeenth Victoria, chapter ninety-two, to make further provision for uniting counties in Scotland in so far as regards the jurisdiction of the Sheriff; and also to make certain provisions regarding the duties of Sheriffs and Sheriffs Substitute in Scotland. (9th August 1870.)

WHEREAS it is expedient to amend and extend the Act sixteenth and seventeenth Victoria, chapter ninety-two, and to make further provision for uniting counties in Scotland in so far as regards the jurisdiction of the sheriff; and also to make certain provisions regarding the duties of sheriffs and sheriffs substitute in Scotland:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and

Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The county of Kincardine, the office of sheriff whereof is now vacant, shall be and is hereby united with the county of Aberdeen into one sheriffdom, to be called the sheriffdom of Aberdeen and Kincardine, and the functions of the sheriff of the said county of Kincardine shall devolve on and are hereby devolved on and shall be discharged by the sheriff of the county of Aberdeen, who shall be and shall be denominated the sheriff of Aberdeen and Kincardine, without the necessity of any new commission being issued in his favour.

2. Whenever a vacancy shall occur in the office of sheriff of Banff, Elgin, and Nairn, the said counties shall be disunited, and shall no longer constitute one sheriffdom, and the county of Banff shall be united with the counties of Aberdeen and Kincardine into one sheriffdom, to be thereafter called the sheriffdom of Aberdeen, Kincardine,

and Banff, and the functions of the sheriff of the said county of Banff shall thereupon devolve on and be discharged by the sheriff of Aberdeen and Kincardine, who shall be and shall be denominated the sheriff of Aberdeen, Kincardine, and Banff, without the necessity of any new commission being issued in his favour; and the counties of Elgin and Nairn shall in like manner be united with the county of Inverness into one sheriffdom, to be called the sheriffdom of Inverness, Elgin, and Nairn, and the functions of the sheriff of the counties of Elgin and Nairn shall thereupon devolve on and be discharged by the sheriff of the county of Inverness, who shall be and shall be denominated the sheriff of Inverness, Elgin, and Nairn, without the necessity of any new commission being issued in his favour.

3. The counties of Sutherland and Caithness are hereby disunited, and shall no longer constitute one sheriffdom; and the counties of Orkney and Shetland, the office of sheriff whereof is now vacant, shall be and are hereby united with the county of Caithness into one sheriffdom, to be called the sheriffdom of Caithness, Orkney, and Shetland; and the now existing sheriff of Sutherland and Caithness shall be and is hereby relieved and discharged of his office of sheriff, in so far as regards the county of Caithness; and the counties of Ross and Cromarty, the office of sheriff whereof is now vacant, shall be and is hereby united with the county of Sutherland into one sheriffdom, to be called the sheriffdom of Ross, Cromarty, and Sutherland, and the functions of the sheriff of the said counties of Ross and Cromarty shall devolve and are hereby devolved on and shall be discharged by the sheriff of Sutherland, who shall be and shall be denominated the sheriff of Ross, Cromarty, and Sutherland, without the necessity of any new commission being issued in his favour.

4. Whenever a vacancy shall occur in the office of sheriff of Linlithgow, Clackmannan, and Kinross, the said counties shall be disunited and shall no longer constitute one sheriffdom, and the county of Linlithgow shall be united with the county of Mid-Lothian into one sheriffdom, to be called the sheriffdom of Mid-Lothian and Linlithgow, and the functions of the said sheriff of Linlithgow shall thereupon devolve on and be discharged by the sheriff of Mid-Lothian, who shall be and shall be denominated the sheriff of Mid-Lothian and Linlithgow, without the necessity of any new commission being issued in his favour; and the county of Kinross shall be united with the county of Fife into one sheriffdom, to be called the sheriffdom of Fife and Kinross, and the functions of the sheriff of Kinross shall thereupon devolve on and be discharged by the sheriff of Fife, who shall be and shall be denominated the sheriff of Fife and Kinross, without the neces-

sity of any new commission being issued in his favour; and the county of Clackmannan shall be united with the county of Stirling into one sheriffdom, to be called the sheriffdom of Stirling and Clackmannan, and the functions of the sheriff of Clackmannan shall thereupon be devolved on and be discharged by the sheriff of Stirling, who shall be and shall be denominated the sheriff of Stirling and Clackmannan.

5. Whenever a vacancy shall occur in the office of sheriff of Haddington and Berwick, the said counties shall be disunited and shall no longer constitute one sheriffdom, and the county of Haddington shall be united with the county of Mid-Lothian into one sheriffdom, to be called the sheriffdom of Mid-Lothian and Haddington, and the functions of the sheriff of Haddington shall thereupon devolve on and be discharged by the sheriff of Mid-Lothian, who shall be and shall be denominated the sheriff of Mid-Lothian and Haddington, without the necessity of any new commission being issued in his favour; and the county of Berwick shall be united with the counties of Roxburgh and Selkirk into one sheriffdom, to be called the sheriffdom of Roxburgh, Berwick, and Selkirk, and the functions of the sheriff of Berwick shall thereupon devolve on and be discharged by the sheriff of Roxburgh and Selkirk, who shall be and shall be denominated the sheriff of Roxburgh, Berwick, and Selkirk, without the necessity of any new commission being issued in his favour.

6. So soon as the counties of Mid-Lothian, Linlithgow, and Haddington are united as hereinbefore provided, they shall constitute one sheriffdom, to be called the sheriffdom of the Lothians, and when the county of Peebles is added thereto the said four counties shall be constituted one sheriffdom, to be called the sheriffdom of the Lothians and Peebles.

7. Whenever a vacancy shall occur in the office of sheriff of Wigtown and Kirkcudbright, the said counties shall no longer constitute one sheriffdom, but shall be united with the county of Dumfries into one sheriffdom, to be called the sheriffdom of Dumfries and Galloway, and the functions of the sheriff of Wigtown and Kirkcudbright shall thereupon devolve on and be discharged by the sheriff of Dumfries, who shall be and shall be denominated the sheriff of Dumfries and Galloway, without the necessity of any new commission being issued in his favour.

8. Whenever a vacancy shall occur in the office of sheriff of Dumbarton and Bute, the said counties shall be disunited, and shall no longer constitute one sheriffdom, and the county of Dumbarton shall be united with the county of Stirling

into one sheriffdom, to be called the sheriffdom of Stirling and Dumbarton, and the functions of the sheriff of Dumbarton shall thereupon devolve on and be discharged by the sheriff of Stirling, who shall be denominated the sheriff of Stirling and Dumbarton, without the necessity of any new commission being issued in his favour; and the county of Bute shall be united with the county of Renfrew into one sheriffdom, to be called the sheriffdom of Renfrew and Bute, and the functions of the sheriff of Bute shall thereupon devolve on and be discharged by the sheriff of Renfrew, who shall be and shall be denominated the sheriff of Renfrew and Bute, without the necessity of any new commission being issued in his favour.

9. As soon as the counties of Stirling, Dumbarton, and Clackmannan are united as hereinbefore provided, they shall constitute one sheriffdom, to be called the sheriffdom of Stirling, Dumbarton, and Clackmannan.

10. After any union of counties shall have occurred under the provisions of this Act, no separate appointment shall be made to the office of sheriff of any county so united, but appointment shall only be made to the office of sheriff of such united counties or sheriffdoms as vacancies shall occur after such union.

11. Nothing herein contained shall give any right to the sheriff of any such united counties to any additional salary beyond that enjoyed by him as sheriff of any county or counties before such union; but on any union taking place under this Act, it shall be lawful for the Lords of Her Majesty's Treasury to make such addition to the salary of the sheriffs of the united counties as they shall deem reasonable, to be paid out of money to be provided by Parliament for that purpose.

12. Every union of counties into one sheriffdom, under the provisions of this and the recited Act or either of them, shall be deemed to be a complete union to all intents and purposes in so far as regards the jurisdiction, powers, and duties of

the sheriff and his substitutes, and in so far as regards the powers, duties, rights, and privileges of procurators before the courts of the sheriff. And the several counties of any such united sheriffdom shall not thereafter be regarded as separate sheriffdoms or jurisdictions, but as one sheriffdom and jurisdiction, in so far as regards the powers, duties, rights, and privileges of the sheriff and his substitutes, and the procurators of the sheriff's court.

13. It shall be lawful to Her Majesty, by one of her Principal Secretaries of State, to prescribe from time to time the number of courts to be held by the several sheriffs of Scotland who shall be appointed after the passing of this Act, and the times and places for holding such courts, and also from time to time to prescribe the duties of the office of sheriff which such sheriffs respectively are required to perform personally; provided always, that nothing herein contained, and no order made or direction given under the authority of this clause, shall affect the validity or legal authority of any act done by any sheriff or sheriff substitute in pursuance of his jurisdiction and lawful authority; and so much of the Act of the first and second Victoria, chapter one hundred and nineteen, as provides that every sheriff, with the exception of the sheriffs of the counties of Edinburgh and Lanark, shall after his appointment be in habitual attendance upon the Court of Session during the sittings thereof, shall be and is hereby repealed; but nothing herein contained shall affect the qualification for appointment to the office of sheriff as prescribed by the said Act.

14. It shall be lawful to Her Majesty, by one of her Principal Secretaries of State, from time to time to prescribe the number of salaried sheriff substitutes of the several counties or sheriffdoms, and the places at which such salaried sheriff substitutes respectively are required generally to reside and attend for the performance of their duties, and the number of courts to be held by them, and the times and places of holding such courts.

#### CHAP. 87.

#### *Annuity Tax Abolition (Edinburgh and Montrose, &c.) Act (1860) Amendment.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Bond of annuity redeemable.*
2. *On redemption existing securities to be deemed discharged.*
3. *Magistrates may apply funds of city towards redemption, and borrow not exceeding £6,500.*
4. *Nothing in this Act to affect the rights of the city creditors.*



5. Mortgages how to be exercised.
  6. Money may be raised on cash credit.
  7. Power to borrow money from the Loan Commissioners.
  8. Commissioners of Treasury may issue money for loan.
  9. Extension of powers, &c. to this Act.
  10. Power of levying increased assessments to continue until bond is redeemed and debt paid off.
  11. Tax in parish of Canongate to be imposed until bond is redeemed and debt paid off.
  12. After which stipend to be paid by Ecclesiastical Commissioners.
  13. Appropriation of church-door collections.
  14. Annual payment from revenues of Leith Docks to be redeemed.
  15. Power to Leith Dock Commissioners to borrow money.
  16. Incorporation of clauses of 10 & 11. Vict. c. 16.
  17. Priority of money borrowed by Leith Dock Commissioners.
  18. Application of money borrowed by Leith Dock Commissioners.
  19. Presentations to certain churches to cease.
  20. Patronage of other churches transferred to Ecclesiastical Commissioners.
  21. Application of money by Ecclesiastical Commissioners.
  22. Power to increase stipends of whole ministers.
  23. Application of the proceeds of the Makcail mortification.
  24. Commissioners may sell or let New Street Church.
  25. Application of funds of Ecclesiastical Commissioners.
  26. Town council shall pay over a sum of 1,500*l.* to kirk session.
  27. Kirk session to pay a sum of 70*l.* per annum to minister of second charge out of rents, church, seats, &c.
  28. Kirk session to pay 60*l.* per annum out of church-door collections.
  29. Kirk session may levy assessments on pews and seats.
  30. Forfeiture of seats in default of payment.
  31. Kirk session to fix the amount of stipend for clergyman of second charge.
  32. Repeal of Act at variance with this Act.
- Schedules.

An Act to amend the Act twenty-third and twenty-fourth Victoria, chapter fifty, intituled "An Act to abolish the "Annuity Tax in Edinburgh and Montrose, and to make provision in regard to the Stipends of the "Ministers in that City and Burgh, "and also to make provision for the "Patronage of the Church of North "Leith;" and to make provision for the abolition of the Annuity Tax within the Parish of Canongate, and for the payment of the Minister of said Parish. (9th August 1870.)

WHEREAS it is expedient to amend the Act of the twenty-third and twenty-fourth Victoria, chapter fifty, intituled "An Act to abolish the "Annuity Tax in Edinburgh and Montrose, and "to make provision in regard to the stipends "of the ministers in that city and burgh, and "also to make provision for the patronage of the "church of North Leith;" to enable the magistrates and council of Edinburgh to redeem the bond of annuity granted by them in virtue of said Act to the Edinburgh Ecclesiastical Com-

missioners; to abolish the annuity tax within the parish of Canongate; and to make further provisions regarding the management and patronage of the parish churches of Edinburgh, and the payment of the ministers thereof and of the Canongate;

And whereas it is also expedient to repeal certain of the provisions of the said Act applicable to Montrose, and to substitute other provisions in lieu thereof:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The bond of annuity for four thousand two hundred pounds granted in virtue of the said Act twenty-third and twenty-fourth Victoria, chapter fifty, by the magistrates and council of Edinburgh to the Edinburgh Ecclesiastical Commissioners, shall be redeemable on payment, as herein-after provided, by the said magistrates and council, to the said commissioners, of the sum of fifty-six thousand five hundred pounds.

2. The said redemption may be made at the term of Martinmas one thousand eight hundred and seventy, or at any subsequent term of Whit-

sunday or Martinmas, upon three months previous notice in writing to the said Commissioners; and on payment of the said sum of fifty-six thousand five hundred pounds being completely made, and receipt therefor being recorded in the register in which the said bond is recorded, the said bond and the existing securities therefor shall by virtue of this Act be deemed to be validly discharged, subject to the claim of the said Commissioners for the amount of the annuity due at the term of redemption, if such redemption take place at the term of Whitsunday, or if the redemption take place at the term of Martinmas, for the half-year's annuity due at Candlemas then next ensuing.

3. The said magistrates and council shall be entitled and are hereby authorised to take out of the estate and revenues of the city of Edinburgh under their administration, and apply towards the redemption of the said bond, such sum as they shall judge proper and expedient; and they are hereby empowered to borrow on the security of said estate and revenues any sum not exceeding the said sum of fifty-six thousand five hundred pounds which they shall find necessary for the purpose of redeeming the said bond, and to pay the interest thereof, and from time to time as shall be proper and expedient in course of a due administration, to pay off the capital out of said estate and revenues; and it shall be lawful for them to grant all proper deeds of obligation and security for the money so borrowed; and it is declared that the estate and revenues in this clause referred to include the whole property and funds referred to in clause nine of the said Act of twenty-third and twenty-fourth Victoria, chapter fifty, and also the assessments by that Act and this Act authorised to be levied.

4. Nothing in this Act contained shall alter or affect the rights of the creditors of the city of Edinburgh, as secured by the Acts first and second Victoria, chapter fifty-five, seventh Victoria, chapter twenty, and thirty-first and thirty-second Victoria, chapter forty-two, and the securities for the sums to be borrowed in virtue of this Act are hereby declared to be postponed to the rights in security created by the said Acts, in so far as relates to the property thereby disposed or assigned for the security of the said creditors of the city, and the rights of the said creditors in relation thereto; nor shall any of the provisions of this Act affect the rights of any persons holding rights or securities over the special subjects or property acquired under the provisions of the Act tenth and eleventh Victoria, chapter forty-eight, or of the Act thirteenth and fourteenth Victoria, chapter seventy; and nothing in this Act contained shall authorise the creditors under this Act to interfere in any way with the

administration of the property, funds, revenues, or income hereby assigned in security of the mortgages or cash credit bonds to be granted in virtue of this Act, so long as the interest and annual instalments of principal shall continue to be regularly paid.

5. All deeds of security to be granted under the provisions of this Act may be executed by the Lord Provost and the City Treasurer, as representing the said magistrates and council, and a deed of mortgage, in the form contained in the Schedule (A.) hereto annexed, or in a similar form, shall be a valid and effectual obligation and security for money borrowed under the provisions of this Act, and every such mortgage may be transferred by indorsation in the form contained in the said schedule, or in a similar form.

6. It shall be lawful for the magistrates and council to accept and take from any bank or banking company credit on a cash account to be opened and kept with such bank or banking company in the name of the magistrates and council according to the usage of bankers in Scotland, to the extent of the sum which the magistrates and council are by this Act authorised to borrow, and to make and grant mortgages and assignments of the property, income, and revenue of the city before specified, and the rates to be levied by them under the provisions hereof, in security of the payment of the amount of such credit or of the sums advanced from time to time on such cash account, with interest thereon; which mortgages and assignments may be in the form contained in Schedule (B.) to this Act annexed, or in a similar form: Provided always, that the whole sum due and owing by the magistrates and council on such cash account, and for money borrowed by them on bonds or mortgages as aforesaid, shall not, when taken together, exceed the sum of fifty-six thousand five hundred pounds by this Act authorised to be borrowed.

7. In case notice shall be given by the said magistrates and council to the said Ecclesiastical Commissioners to redeem the said bond of annuity at the term of Martinmas one thousand eight hundred and seventy, or at the term of Whitsunday one thousand eight hundred and seventy-one, it shall be lawful for the said magistrates and council, at or prior to the said term of Martinmas one thousand eight hundred and seventy, or the said term of Whitsunday one thousand eight hundred and seventy-one, but not thereafter, in place of raising money in the above manner, to borrow on mortgage from the Public Works Loan Commissioners, and for the said Commissioners, out of funds at their disposal

under this Act, to lend and advance to the said magistrates and council, under the direction and with the consent of the Commissioners of Her Majesty's Treasury, for the purposes of this Act, a sum not exceeding in the whole the sum of fifty-six thousand five hundred pounds, on such security as may be satisfactory to the said Public Works Loan Commissioners; the said sum of fifty-six thousand five hundred pounds to be repaid by half-yearly instalments within a period of ten years from the date of the advance, together with interest at the rate of three and a half per centum per annum on such part of the said sum of fifty-six thousand five hundred pounds as may from time to time remain due and unpaid.

8. For the purposes of the above loan by this Act authorised, the Commissioners of Her Majesty's Treasury may from time to time, by warrant under the hands of two or more of them, cause to be issued out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, to the account of the Commissioners for the Reduction of the National Debt, any sum or sums of money not exceeding in the whole the sum of fifty-six thousand five hundred pounds, such money to be applied exclusively under this Act, and be at the disposal of the Public Works Loan Commissioners in like manner in all respects as money placed at their disposal under the Act of the session of the twenty-ninth and thirtieth years of Her Majesty, chapter seventy-two, and the Acts therein recited, subject nevertheless to the provisions of this Act, which provisions shall have full effect, notwithstanding anything in "The Public Works Loan Act, 1853," or any Act therein mentioned, to the contrary contained.

9. All the clauses, powers, authorities, provisions, enactments, directions, regulations, restrictions, privileges, priorities, advantages, penalties, and forfeitures contained in and conferred and imposed by the said Acts or any of them, so far as the same may be made applicable and are not varied by this Act, shall be taken to extend to this Act and to everything to be done in pursuance of this Act, as if the same were herein repeated and set forth.

10. The power of levying increased assessments conferred on the said magistrates and council by section eleven of the said Act of twenty-third and twenty-fourth Victoria, chapter fifty, shall, so far as now subsisting, but no farther, continue until the said bond shall be redeemed and discharged, and until the whole debt incurred by borrowing money under the authority of this Act shall be paid off, and shall then cease; and after the redemption and discharge

of the said bond the said magistrates and council shall be bound to levy and collect the said increased assessments until the whole debt incurred by borrowing money under the authority of this Act shall be paid off: Provided always, that after the passing of this Act an account shall be kept, and annually published by the said magistrates and council, of the produce of said increased assessments, and the said publication shall be made at the same time and in the same manner as the account of the municipal expenditure of the city, and that after the redemption and discharge of the said bond of annuity the whole of said produce shall be used and applied to the purpose of paying off and extinguishing the debt incurred by borrowing money under the provisions of this Act, and the interest of said debt, and to no other purpose.

11. The tax imposed in the parish of Canongate under section four of the Act thirtieth and thirty-first Victoria, chapter one hundred and seven, shall continue to be imposed until the said bond shall be redeemed and discharged, and until the whole debt incurred by borrowing money under the authority of this Act shall be paid off, and shall then cease to be imposed; and from and after such redemption and discharge the said tax shall be levied, collected, and applied by the magistrates and council of Edinburgh, in the same manner as the said increased assessments.

12. From and after the redemption and discharge of said bond of annuity, the stipend of the minister of the parish of Canongate shall be paid by the Edinburgh Ecclesiastical Commissioners out of the funds in their hands, under the said Act twenty-third and twenty-fourth Victoria, chapter fifty, and thirtieth and thirty-first Victoria, chapter one hundred and seven, and this Act.

13. From and after the redemption and discharge of said bond, one half of the ordinary church-door collections of the churches the ministers whereof are paid by the Edinburgh Ecclesiastical Commissioners shall be paid to the said commissioners by the kirk sessions of said churches respectively, and shall be applicable to the payment of precentors, beadles, and door-keepers, and to defraying the expense of celebrating communion, and heating and lighting the churches; and should any balance remain, the same may be applied, in the discretion of the said commissioners, to any ecclesiastical purpose within their charge.

14. Whereas by the Act first and second Victoria, chapter fifty-five, the Commissioners for the harbour and docks of Leith (hereinafter called the Leith Dock Commissioners) are directed

to pay annually out of the revenues of the harbour and docks of Leith into an account therein specified, in preference to all other payments, the sum of seven thousand six hundred and eighty pounds, and out of that sum the Remembrancer and Auditor of the Court of Exchequer in Scotland is directed to pay the sum of two thousand pounds annually to and for behoof of the ministers of the city of Edinburgh, to any person duly authorised by them to receive the same, which sum of two thousand pounds is by the Public Act twenty-third and twenty-fourth Victoria, chapter fifty, directed to be annually paid to the Edinburgh Ecclesiastical Commissioners: And whereas it is expedient that the said annual sum of two thousand pounds now payable by the Leith Dock Commissioners, being part of the said annual sum of seven thousand six hundred and eighty pounds, should be redeemed on payment to the said Ecclesiastical Commissioners of a capital sum of forty thousand pounds: Therefore, the Leith Dock Commissioners shall, on the fifteenth day of May one thousand eight hundred and seventy-one, pay to the said Ecclesiastical Commissioners the sum of forty thousand pounds, in redemption of the said annual sum of two thousand pounds, with interest of the said sum of forty thousand pounds at the rate of five pounds per centum per annum from the date of payment till paid; and on payment of the said sum of forty thousand pounds, and any interest which may become due thereon, the said Ecclesiastical Commissioners shall grant a discharge thereof and of the said annual sum of two thousand pounds, and the said annual sum of seven thousand six hundred and eighty pounds payable out of the revenues of the said harbour and docks shall be reduced and restricted to five thousand six hundred and eighty pounds per annum, and the said annual sum of two thousand pounds shall cease to be payable by the said Remembrancer and Auditor of the Court of Exchequer to the said Ecclesiastical Commissioners.

15. For the purpose of raising the said redemption money, it shall be lawful for the Leith Dock Commissioners, in addition to any money borrowed or authorised to be borrowed by them before the passing of this Act, to borrow any sums of money not exceeding forty thousand pounds, and in security of the payment of the sums so borrowed and the interest thereon, to make and grant mortgages and assignments of the said harbour and docks, and the works and property vested in or acquired or to be acquired or constructed by the Leith Dock Commissioners, and the rates and duties to be levied by them under the authority of the Acts relating to the said harbour and docks, or any of them, or to accept and take from any bank credit on a cash account to be opened and kept with such bank

in the name of the Leith Dock Commissioners, according to the usage of bankers in Scotland, or in such other form as may be preferred by such bank, to the extent of the said sum of forty thousand pounds or any part thereof, and, if required, to make and grant mortgages and assignments of the said harbour and docks and the said works, and property and rates and duties, in security of the payment of the amount of such credit, or of the sums advanced from time to time on such cash account, with interest thereon; and if after having borrowed the said sum, or any part thereof, the Leith Dock Commissioners pay off the same otherwise than by means of any sinking fund, it shall be lawful for them again to borrow the amount so paid off, and so from time to time; and the mortgages and assignments to be made and granted by the Leith Dock Commissioners may be in writing or printed, or partly in writing and partly printed, and shall be sealed with their common seal, and signed at and in presence of a meeting of the Leith Dock Commissioners, in the manner prescribed by the Public Act seventh Victoria, chapter twenty..

16. The clauses of "The Commissioners Clauses Act, 1847," with respect to the mortgages to be executed by the Commissioners, with the exception of section eighty-four, are hereby incorporated with this Act, and shall be applicable to the money to be borrowed and the mortgages and assignments to be granted by the Leith Dock Commissioners under the authority of this Act.

17. The said sum of forty thousand pounds, and the mortgages and assignments or other securities to be granted therefor, and the interest payable thereon, shall be and are hereby constituted preferable burdens on the said harbour and docks and the said works and property and rates and duties, and shall have priority over all other mortgages, assignments, and securities granted or to be granted by the Leith Dock Commissioners for money borrowed or to be borrowed by them, and over all other payments out of the revenues of the said harbour and docks, except the sum of three thousand one hundred and eighty pounds payable annually to the creditors of the city of Edinburgh in terms of the said Act first and second Victoria, chapter fifty-five, being part of the said annual sum of seven thousand six hundred and eighty pounds, and which annual sum of three thousand one hundred and eighty pounds shall rank *pari passu* with the said sum of forty thousand pounds and the interest thereon.

18. The money borrowed by the Leith Dock Commissioners under the authority of this Act shall be applied in paying the said sum of forty

thousand pounds, and in redeeming the said annual sum of two thousand pounds, and to no other purpose whatever.

19. It shall not be competent to the Ecclesiastical Commissioners, or to any patron or patrons, or to any presbytery, to nominate or present a minister to any of the five churches or charges specified in section twenty-one of the said Act twenty-third and twenty-fourth Victoria, chapter fifty, or to the parish of New Canongate, and the said churches and charges, and the said parish of New Canongate, shall not be provided with ministers or otherwise maintained as churches and charges endowed by law: Provided always, that it shall be competent to the said Commissioners, by a minute under their corporate seal, to annex for all parochial purposes such portions of such of the parishes attached to the said five churches or charges, or of the said parish of New Canongate, as may be specified in such minute to any of the other parishes in the said city or Canongate, and it shall be lawful for said Commissioners to raise to six hundred pounds the stipend of each minister of the city of Edinburgh who is now entitled to a stipend of five hundred and fifty pounds only.

Provided further, that nothing herein contained shall prevent the Tolbooth Church, and the old church, or either of them, being provided with a minister or ministers of the Church of Scotland who shall be paid or endowed from voluntary sources; and in case a permanent endowment from voluntary sources shall be provided and secured to a minister or ministers for both or either of said churches, and provision made for maintaining the church or churches, all in such manner as to warrant the erection and constitution of a church and parish quoad sacra, according to the existing law, the said Commissioners are hereby authorised and required to concur so far as may be necessary on their part in the proper proceedings, before the court of Commissioners of Teinds, in order to the erection and constitution of a church and parish quoad sacra with respect to both or either of said churches.

20. The patronage of the parish churches of the city of Edinburgh is hereby transferred to and vested in the Edinburgh Ecclesiastical Commissioners as trustees for the respective congregations of said churches, and the said Commissioners shall on the occurrence of each vacancy exercise the said patronage by issuing a presentation in accordance with the desire of the congregation of the vacant church as expressed by a majority of the male communicants thereof, whose names have been on the communion roll for not less than one year immediately preceding the vacancy; and the said Commissioners shall be at liberty from time to time to make regulations

with respect to the mode of taking the votes of such communicants.

21. The said Ecclesiastical Commissioners shall be entitled and bound to invest the whole money which shall be paid to them under this Act on such securities as they shall consider proper, or in the purchase of land, and shall be entitled and bound to use and apply the interest, rents, and proceeds thereof for the purposes specified in the said Act twenty-third and twenty-fourth Victoria, chapter fifty, and this Act.

22. It shall be in the power of the Commissioners to increase the stipends of the whole ministers falling under the operation of this Act, rateably according to the amount presently payable to each, and that by minute under their corporate seal.

23. The annual produce of the mortification of David Makcall, mentioned in section six of the Act of thirtieth and thirty-first Victoria, chapter one hundred and seven, shall hereafter be paid by the magistrates and town council to the Edinburgh Ecclesiastical Commissioners, and together with the bishop's rents, kirkyard dues, and other sums, with the exception of sums contributed by the Endowment Committee of the Church of Scotland, vested in the said Commissioners by section seven of the said Act, shall be appropriated by them solely to the use of the minister of the parish of Canongate.

24. The Commissioners may, if they think fit, with the consent and approval of the presbytery of Edinburgh, or a majority of the same, sell and dispose of, or let or lease, the church situate within the new parish of Canongate, sometime called New Street Church, and the price or rents, as the case may be, to be received by the Commissioners shall be held and applied by them as herein-after directed.

25. The Commissioners shall be bound to keep accounts of their receipts and expenditure, under the Acts of twenty-third and twenty-fourth Victoria, chapter fifty, and the Act of thirtieth and thirty-first Victoria, chapter one hundred and seven, and this Act, and to apply the property and income to be received by them according to the following provisions; that is to say,—

1. They shall keep two separate and distinct accounts, one to be called (and herein-after referred to as) "The Stipend Fund Account," and another to be called (and herein-after referred to as) "The General Purposes Fund Account."
2. Until the redemption moneys mentioned in sections one and fourteen of this Act shall have been paid, the following sums shall

be annually paid into an account to be called "The Stipend Fund Income Account:—"

1. The present annual payment of four thousand two hundred pounds, and two thousand pounds.
2. The proceeds of the seat rents of the churches the stipends whereof are paid by the Commissioners to the extent of one thousand six hundred pounds.
3. The sum payable to the said Ecclesiastical Commissioners in terms of the fourth section of said Act thirtieth and thirty-first Victoria, chapter one hundred and seven.

After the redemption of either of the said present annual payments, the following sums shall be paid into the "Stipend Fund Income Account:—"

1. The interest or annual proceeds of the redemption money of the payment which has been redeemed.
2. The annual payment which has not been redeemed.
3. The said seat rents to the extent of two thousand pounds in the event of its being the payment from exchequer which shall be redeemed, and to the extent of three thousand pounds in the event of its being the bond of annuity which shall be redeemed.
4. In the event of its being the payment from exchequer which shall be redeemed the sum payable to the Ecclesiastical Commissioners under the fourth section of the Act thirtieth and thirty-first Victoria, chapter one hundred and seven.

After the redemption of both annual payments, the following sums shall be paid into the said "Stipend Fund Income Account:—"

1. The interest of the redemption moneys.
2. The seat rents to the extent of four thousand two hundred pounds.
3. The balance, if any, of the seat rents, beyond the sum of four thousand two hundred pounds, and all other funds payable to and revenues received by the Commissioners, shall be exclusively applicable to and be paid to the credit of "The General Purposes Fund."
4. Out of the Stipend Fund Account the Commissioners shall make payment, in two equal portions, at the terms of Candlemas and Whitsunday one thousand eight hundred and seventy-one, and annually thereafter, to each of the ministers

for the time being of the parochial churches of the said city after mentioned, or to any person duly authorised to receive the same on behalf of the said ministers, a stipend or salary of six hundred pounds per annum, except as after mentioned; that is to say, to the ministers of the thirteen following churches, namely, the New North Church, Trinity College Church, Lady Yester's Church, Old Greyfriars' Church, New Greyfriars' Church, St. John's Church, St. George's Church, St. Mary's Church, St. Stephen's Church, Greenside Church, The High Church, The Tron Church, and St. Andrew's Church, provided that the portion of the said salaries or stipends to be paid at the term of Candlemas shall be for the period from Whitsunday to Michaelmas preceding, and the portion to be paid at the term of Whitsunday shall be for the period from Michaelmas to Whitsunday, and shall be subject to the whole conditions applicable by law to the stipends or salaries formerly payable to the ministers of Edinburgh from the produce of the impost or tax formerly levied under the name of the annuity tax within the ancient and extended royalties of the city of Edinburgh, as referred to in the second section of the Act of twenty-third and twenty-fourth Victoria, chapter fifty; provided always, that the ministers of the following churches, viz., the Trinity College Church, the Tron Church, Old Greyfriars' Church, and St. Stephen's Church, shall not be entitled to demand a salary or stipend of more than five hundred and fifty pounds per annum until the events herein-after specified; and also provided that, upon the death or removal of any of the present ministers of the nine remaining churches, the successor or successors of such minister or ministers shall not be entitled to demand a salary or stipend of more than five hundred and fifty pounds per annum, until the events after specified. Further, the Commissioners, while the bond of annuity and payment from exchequer remains unredeemed, shall pay to the minister of the Canongate Church the sums of money specified under the ninth section of the Act thirtieth and thirty-first Victoria, chapter one hundred and seven; provided always, that after the said bond and payment have been redeemed, the minister of the said Canongate Church shall not be entitled to demand more than two hundred and fifty pounds, until the events after specified; and if the Stipend Fund Account shall not be sufficient to pay in any

year the stipends due to the existing incumbents, the Commissioners shall be authorised, as often as any deficiency arises, to raise and apply such portion of the capital as may be necessary to meet such payments; and after the payment of such stipends, and also after repaying any such sum as may have been contributed out of the capital to meet deficiencies, the Commissioners shall, at their option, and according to their discretion, apply the balance, if any, of the Stipend Fund Account for any of the other purposes authorised by the Acts of twenty-three and twenty-four Victoria, chapter fifty, and thirty and thirty-one Victoria, chapter one hundred and seven, and this Act, except those hereby specially charged on the "General Purposes Fund." Provided always, that if at any time the Stipend Fund Account shall not in the opinion of the Commissioners be sufficient to enable them to pay to any minister to be hereafter appointed to any church, the stipend whereof is by this Act made payable by the Commissioners, the full amount of the stipend which under this Act he is entitled to receive, they shall not be required to pay to any such minister a greater sum than such proportion of his stipend as the said Stipend Fund Account will in their opinion then enable them to pay.

5. The Commissioners shall hold the General Purposes Fund Account for the purposes following, that is to say,—

(First.) The costs, charges, and expenses properly incurred by the Commissioners, and in payment of the salaries of all officers and servants properly employed by them in carrying the provisions of this and the recited Acts into effect, and of the feu duties payable by the Commissioners; and in insuring the several churches against loss by fire, to such extent as they shall think necessary; and maintaining and upholding in repair the fabric thereof, and in payment of the proportion of the salaries of the clerk of the synod of Lothian and Tweeddale, and the clerk and officer of the presbytery of Edinburgh, payable for the said churches, or any of them.

(Second.) So far as the Commissioners may consider necessary, and in the event of the kirk sessions, or any of them, not being able to pay the same out of the church-door collections or otherwise, the whole or any part of the expenses of the celebration of Divine ordinances in the respective

churches, and in the maintenance and repair of the fabrics of the said churches.

And with regard to Montrose, be it enacted as follows:

26. At or before the first term of Whitsunday following the vacancy in the second charge of the church and parish of Montrose, first occurring after the passing of this Act, the provost, magistrates, and town council of the said burgh shall pay from the first and readiest of the corporate funds of the said burgh to the kirk session of the said church and parish the sum of one thousand five hundred pounds, and shall within two months of the passing of this Act execute and deliver to the treasurer of the said kirk session for their behoof, a bond therefor in the terms contained in Schedule (C.) annexed to this Act, and shall likewise execute and deliver to the said kirk session a valid transfer in their favour of the whole pews or seats in said church now belonging to the said provost, magistrates, and town council, with entry thereto at the first term of Whitsunday following said vacancy, and the annual interest of the said sum of one thousand five hundred pounds and the annual rents of said pews or seats shall be paid by the said kirk session to the succeeding minister of the said second charge and his successors in office by equal portions at the terms of Martinmas and Whitsunday respectively.

27. From and after the first term of Whitsunday or of Martinmas following the vacancy in the second charge, out of the first and readiest of the whole rents of lands and church seats, feu duties, ground annuals, and interest of moneys now belonging to or administered by the said kirk session, their treasurer or others on their behalf, the said kirk session, treasurer, and others shall pay to the succeeding minister of the said second charge and his successors in office an annual sum of seventy pounds by equal portions at the terms of Martinmas and Whitsunday respectively, which annual sum shall be a real and preferable first charge and burden in favour of the said second minister and his successors in office upon the said lands, feu duties, ground annuals, and interests aforesaid, and upon the gross rents and revenues arising therefrom, after deduction only from such gross rents and revenues of the minister's stipend the public and local burdens and taxes and the expenses of repairs of buildings belonging to the said kirk session upon said lands.

28. From and after the said term of Whitsunday or Martinmas following the vacancy in the said second charge, the said kirk session shall, out of the first and readiest of the ordinary church-door collections, pay, by equal portions,

at the terms of Martinmas and Whitsunday respectively, to the succeeding minister and his successors in office, an annual sum of not less than sixty pounds, which annual sum shall be the first charge upon the said collections; and the remainder, if any, of such collections shall belong to and be applied by the said kirk session for the payment of precentors, beadles, doorkeepers, and other officers of the said church and kirk session, and for such other purposes connected with the said church and parish as the said kirk session shall think fit.

29. From and after the first term of Whitsunday or Martinmas following the vacancy in the second charge of the church and parish of Montrose first occurring after the passing of this Act, it shall be lawful for the kirk session of the said church and parish, and they are hereby required, to impose and levy pew or seat rents or assessments on not more than nine tenths of the pews or seats in the said church, at such rate as shall, in addition to the aforesaid annual interest of the said sum of one thousand five hundred pounds, the annual rents of the said pews or seats to be transferred as aforesaid, the said sum of seventy pounds, and the said sum of not less than sixty pounds, together with any stipend or salary which may arise from the interest of any endowment hereafter made for the minister of the second charge, or which may be provided for him by means of special church-door collections, yield an annual sum sufficient to provide for such minister and his successors in office a stipend not exceeding the sum of three hundred and forty pounds.

30. The said pew or seat rents or assessments so imposed and levied shall be exigible from and payable by the proprietors of said pews or seats, and that annually and in advance, from and after the first term of Whitsunday or Martinmas following said vacancy, and in the event of two years pew or seat rents or assessments so imposed being due by any proprietor at one time, such proprietor (or the person acting for him in uplifting the said seat rents) shall, upon receiving two months written notice to that effect, ipso facto, forfeit and lose all right and title to the said pews or seats, and the same shall thenceforth become the property of the said kirk session, and be used or let by them, and shall be subject to the same rent or assessment in favour of the second minister as if the same had remained the property of the original proprietor. Provided always, that such proprietor or his successors shall be entitled to redeem the same at any time thereafter, upon payment to the kirk session of all arrears of rents or assessments, and interest arising thereon at the rate of five pounds per cent. per annum, but without any claim against

the said kirk session for any rents which may have been uplifted therefrom during the possession of the said kirk session.

31. Power is hereby given to the kirk session (or a majority thereof), with the sanction of the presbytery of Brechin (or a majority thereof), previous to the appointment of any clergyman to any vacancy in the said second charge, to fix the amount of stipend to be paid to such clergyman, and raised in manner aforesaid, provided that such shall not exceed the foresaid sum of three hundred and forty pounds.

32. Section six of the Act twenty-third and twenty-fourth Victoria, chapter fifty, and section eight of the Act thirty and thirty-first Victoria, chapter one hundred and seven, so far as they authorise the respective kirk sessions to retain any portion of the seat rents for any purpose, and all laws, statutes, and usages, in so far as the same are at variance with the provisions of this Act, are hereby repealed.

#### SCHEDULE (A.)

##### Form of Mortgage.

Mortgage of the sum of No. pounds, £ to the said

By virtue of an Act passed in the thirty-third year of the reign of Her Majesty Queen Victoria, intituled [here insert the title of this Act], we, the Lord Provost, magistrates, and council of the city of Edinburgh, for ourselves, and as representing the community of the said city, in consideration of the principal sum of [specify amount] paid by [name and designation of mortgagee] to the city treasurer for the purposes of the said Act, do hereby, subject to the rights of the creditors and others of the said Act reserved, grant and assign the whole estate and revenues of the city of Edinburgh under our administration and referred to in clause three of the said Act, to hold to the said mortgagee and his forebears until the said principal sum and interest thereon from the date hereof till paid shall be fully paid and satisfied.

Dated this                      day of                      one thousand eight hundred and

[To be signed by the Lord Provost and the city treasurer, and to have the corporate seal attached.]

##### Form of Transfer to be endorsed.

I, A.B., within designed [or I, A.B., executor-at-law or otherwise, as the case may be, of the said within designed] do transfer this mortgage, with all right, title, and interest which I have under



the same, to E.R., [as his, her, or their, as may be.] executors, administrators, and assignees. In witness whereof [insert testing clauses according to the law of Scotland. If executed furth of Scotland, the form of execution and attestation used in England may be adopted.]

#### SCHEDULE (B.)

##### *Form of Mortgage for Cash Credit.*

By virtue of an Act passed in the thirty-third year of the reign of Her Majesty Queen Victoria, intituled [here insert the title of this Act], we, the Lord Provost, magistrates, and council of the city of Edinburgh, for ourselves, and as representing the community of the said city, in consideration of our having obtained from [name of the bank] a credit or cash account to be operated upon by the city treasurer, for the purposes of the said Act, either by cheques or drafts under his hand, or by debiting the said account under his direction with obligations due and payable by us or under our authority, do hereby grant and assign to the said [name of bank] and their assignees the whole estate and revenues of the city of Edinburgh under our administration and referred to in clause three of the said Act, and that in security and for payment of the amount of the said credit, or otherwise, of the sums advanced from time to time on the said cash account, with interest thereon, at the rates chargeable by the said bank on cash credit accounts for the time, to hold to the said bank and their foresaids, until the said principal sum of credit, or such part thereof as may be advanced from time to time as aforesaid, and interest thereon at the rate foresaid, shall be fully satisfied and paid.

[To be executed as provided in regard to mortgages.]

#### SCHEDULE (C.)

By virtue of an Act passed in the thirty-third year of the reign of Her Majesty Queen Victoria, intituled [here insert the title of this Act], we, Robert Barclay, Esquire, Provost of the Burgh of Montrose, and Messieurs David Mitchell, Charles Low, and David Lackie, bailies, and David Keith Middleton, treasurer thereof, and the remanent members of the council of the said burgh of Montrose, as representing the community of the said burgh, bind and oblige ourselves and our successors in office in terms of the said Act to pay to Charles Dumbat, merchant in Montrose, treasurer to the Kirk Session of the church and parish of Montrose, and his successors in that office, for behoof of the said kirk session for the purposes expressed or referred to in section twenty-four of the said Act, or to his or their assignees, at the first term of Whitsunday following the vacancy in the second charge of the said church and parish of Montrose first occurring after the passing of the said Act, the principal sum of some thousand five hundred pounds sterling, with a fifth part more of the foresaid principal sum of liquidate penalty in case of failure; and the interest of the said principal sum at the rate of five pounds per centum per annum during the non-payment thereof; And we consent to the registration hereof in the books of council and session or others competent therein, to remain for preservation, and, if necessary, that letters of horning on six days charge, and all other legal execution, may pass upon a decree to be interposed hereto in form as effairs, and for that purpose we constitute our

In witness whereof,

#### CHAP. 86.

##### *The Telegraph Act, 1870.*

#### ABSTRACT OF THE ENACTMENTS.

1. Short title of Act.
2. Incorporation of provisions of Telegraph Acts, 1868, 1869.
3. Extension of those Acts to Channel Islands and Isle of Man.
4. Power to purchase the undertaking of the Jersey and Guernsey Telegraph Company, Limited.
5. Confirmation of agreement with the Isle of Man Electric Telegraph Company.
6. Postmaster General may purchase undertakings of companies for transmitting telegrams to Channel Islands.
7. Reservation as to the undertaking of the Submarine Telegraph Company.
8. Amendment of section 6 of the Act of 1868.
9. Saving agreements scheduled in the Act of 1868.

Schedule.

**An Act to extend the Telegraph Acts of 1868, 1869, to the Channel Islands and the Isle of Man.**

(9th August 1870.)

WHEREAS it is expedient for the interests of the public that the provisions of the Telegraph Acts, 1868, 1869, should be extended to the Channel Islands and the Isle of Man, and that the said Acts should be otherwise amended :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as "The Telegraph Act, 1870," and this Act and the "Telegraph Acts, 1868, 1869," may be cited together as "The Telegraph Acts, 1868 to 1870."

2. The provisions of the Telegraph Acts, 1868, 1869, save so far as they are expressly repealed or varied by or inconsistent with the provisions of this Act, shall be incorporated and construed as one with this Act.

3. The Telegraph Acts, 1868, 1869, shall extend to and be in force in the Islands of Jersey, Guernsey, Sark, Alderney, and Man, and the islands and islets adjacent thereto respectively, and for all the purposes of the said Acts and each of them the said islands and islets shall respectively be deemed to be part of the United Kingdom of Great Britain and Ireland.

4. The Postmaster General shall purchase the undertaking of the Jersey and Guernsey Telegraph Company, Limited, upon terms to be settled (failing agreement) by arbitration, in manner provided by the Lands Clauses Consolidation Act, 1845, and the said company shall sell and convey the said undertaking accordingly; and the said Postmaster General shall be let into the possession of the said undertaking immediately upon the passing of this Act, and he shall pay the purchase money or compensation for the same within one month after the amount thereof shall have been ascertained, with interest at the rate of four pounds per centum per annum from the date of his taking possession until the time of payment.

5. The agreement referred to in the schedule to this Act is hereby confirmed, and the Postmaster General shall purchase, and the Isle of Man Electric Telegraph Company shall sell and convey, the undertaking of the same company upon the terms of the said agreement; and the Postmaster General shall be let into the possession of the said undertaking immediately upon

the passing of this Act, and shall pay interest at four pounds per centum per annum on the purchase money from the same date until the time of payment.

6. Upon the request in writing of any telegraph company existing on the fifth day of February one thousand eight hundred and seventy, and engaged in transmitting telegrams between Great Britain or Ireland and the said islands or any of them, or between any one of the said islands and any other of them, or within any one of the said islands, or for all or any of such objects, the Postmaster General shall purchase the whole or any part of the undertaking of such company, provided such request be made within twelve months after the passing of this Act; and the Postmaster General shall accordingly, within one month after the receipt by him of any such request, give notice in writing of his intention to make such purchase, and it shall be lawful for such telegraph company and they are hereby required to sell, convey, and assure their undertaking accordingly, and to give valid discharges for the purchase money.

7. Provided always, that nothing in this Act shall authorize or require the Postmaster General to purchase the undertakings of the Submarine Telegraph Company between Great Britain and the continent of Europe, and the Submarine Telegraph Company between France and England (*Société Carmichael et Co.*), or either of them or any part thereof respectively.

8. Whereas doubts have been suggested as to the effect of the sixth section of the Telegraph Act, 1868, it is hereby declared that, notwithstanding anything therein contained, any company whose undertaking shall be purchased by the Postmaster General under or by virtue of this Act, and any company whose undertaking has been or shall be purchased by the Postmaster General under or by virtue of the Telegraph Acts, 1868, 1869, or either of them, may sue or be sued for any debts owing to or by or for any damages recoverable by or from such company, or for the purpose of enforcing any rights and remedies of or against such company, which shall have accrued before the date of the transfer to the Postmaster General of the undertaking of such company.

9. Nothing in this Act contained shall in anywise prejudice or affect any of the agreements referred to in the schedule to the Telegraph Act, 1868, and thereby confirmed.

—o—o—o—

SCHEDULE to which the foregoing Act refers.

Mortgage and agreement for sale to or in trust for Her Majesty under the seal of the Isle of Man

Electric Telegraph Company, dated the thirtieth day of October one thousand eight hundred and sixty-eight.

## CHAP. 89.

### *Queen Anne's Bounty (Superannuation).*

#### ABSTRACT OF THE ENACTMENTS.

1. Power to governors out of their general fund to grant retired allowances.
2. Power to grant gratuities in certain cases where officers or clerks not entitled by length of service to superannuation.
3. No superannuation to be granted unless approved by Treasury.
4. Restrictions as to grant of full superannuation allowance.
5. Superannuation not to be granted to officers or clerks under 60, except upon medical certificate.
6. Superannuation not to be granted on advanced amount of salary received for less than three years.
7. Superannuations to be inserted in annual return.
8. Act not to confer right to superannuation or employment.
9. Officers appointed under this Act to be subject to regulations hereafter made by Parliament.

An Act to enable the Governors of Queen Anne's Bounty to provide Superannuation Allowances for their Officers.  
(9th August 1870.)

WHEREAS it is expedient that due regulations should be made with regard to the granting of superannuation allowances to the officers and clerks employed by the Governors of the Bounty of Queen Anne:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Subject to the exceptions and provisions herein-after contained, the said governors may pay out of their general fund allowances on retirement from the office to officers and clerks who shall have served in an established capacity in the permanent service of the governors, not exceeding the following; viz.,

To any officer or clerk who shall have served for ten years and upwards and under eleven years, an annual allowance of ten sixtieths of the annual salary and emoluments of his office:

For eleven years and under twelve years an annual allowance of eleven sixtieths of such salary and emoluments, and in like manner an additional annual allowance of one sixtieth in respect of each additional year of

such service until the completion of a period of service of forty years, when the annual allowance of forty sixtieths may be granted, and no addition shall be made in respect of any service beyond forty years.

2. The said governors may grant to any officer or clerk in their service who, being the holder of an office in respect of which a superannuation allowance may be granted, but not having completed the period which would have entitled him to a superannuation allowance, is constrained from infirmity of mind or body to leave the service of the governors before the completion of the period which would entitle him to a superannuation allowance, such sum of money by way of gratuity as the said governors shall think proper, but so that no gratuity shall exceed the amount of one month's pay for each year's service.

3. No superannuation allowance or gratuity under this Act shall be granted to any officer or clerk until the application, with the certificate and the award of the said governors, shall have been submitted to and approved of by the Commissioners of Her Majesty's Treasury: Provided also, that if any question shall arise as to the claim of any officer or clerk for superannuation under this Act it shall be referred to the Commissioners of the Treasury, whose decision shall be final.

4. It shall not be lawful to grant or sanction the full amount of superannuation allowance

which can be granted under this Act to any officer or clerk unless upon production of a certificate from the governors that such officer or clerk has served with diligence and fidelity to the satisfaction of the said governors; provided that the said governors may grant to any officer or clerk any such allowance of less amount than otherwise would have been awarded to him where his defaults or demerit may appear to them and the Commissioners of the Treasury to justify such diminution.

5. It shall not be lawful to grant any superannuation allowance under the provisions of this Act to any officer or clerk who shall be under sixty years of age, unless upon a medical certificate to the satisfaction of the said governors and the Commissioners of the Treasury that he is incapable from infirmity of mind or body to discharge the duties of his situation, and that such infirmity is likely to be permanent.

6. Provided always, and be it further enacted, that the superannuation allowance to be granted to any officer or clerk after the passing of this Act shall not be computed upon the amount of the salary enjoyed by him at the time of his retirement, unless he shall have been in the receipt of the same, or in the class from which he retires, for a period of at least three years immediately before the granting of such superannuation allowance; and in case he shall not have enjoyed his then existing salary or have been in such class for that period, such superannuation allowance shall be calculated upon the average

amount of salary received by such officer or clerk for three years next preceding the commencement of such allowance.

7. A return of all superannuation allowances and gratuities made during the year under this Act, setting forth in each case the length of service, the salary, and the allowance or gratuity awarded, together with the special grounds, if any, on which such allowances have been awarded, shall be inserted by the governors each year in their annual return to Her Majesty in Council, and laid before both Houses of Parliament.

8. This Act shall be held only to authorise and enable the governors from time to time, if they think fit, to grant allowances and gratuities of such amount as is authorised by this Act; and nothing in this Act shall be held to confer on any officer or clerk any right to superannuation, or any greater right to permanent employment, than he would have enjoyed if this Act had not passed.

9. Every person who shall be appointed after the passing of this Act to any office or employment under the governors shall hold the same subject to all regulations and alterations affecting the same which may hereafter be made by authority of Parliament; nor shall any person by his appointment to any such office acquire any claim or title to compensation in case the same be hereafter altered or abolished by Act of Parliament.

#### CHAP. 90.

#### *The Foreign Enlistment Act, 1870.*

##### ABSTRACT OF THE ENACTMENTS.

##### *Preliminary.*

1. *Short title of Act.*
2. *Application of Act.*
3. *Commencement of Act.*

##### *Illegal Enlistment.*

4. *Penalty on enlistment in service of foreign state.*
5. *Penalty on leaving Her Majesty's dominions with intent to serve a foreign state.*
6. *Penalty on embarking persons under false representations as to service.*
7. *Penalty on taking illegally enlisted persons on board ship.*

##### *Illegal Shipbuilding and Illegal Expeditions.*

8. *Penalty on illegal shipbuilding and illegal expeditions.*
9. *Presumption as to evidence in case of illegal ship.*
10. *Penalty on aiding the warlike equipment of foreign ships.*
11. *Penalty on fitting out naval or military expeditions without license.*

12. *Punishment of accessories.*
13. *Limitation of term of imprisonment.*

*Illegal Prize.*

14. *Illegal Prize brought into British ports restored.*

*General Provision.*

15. *License by Her Majesty how granted.*

*Legal Procedure.*

16. *Jurisdiction in respect of offences by persons against Act.*
17. *Venus in respect of offences by persons.*
18. *Power to remove offenders for trial.*
19. *Jurisdiction in respect of forfeiture of ships for offences against Act.*
20. *Regulations as to proceedings against the offender and against the ship.*
21. *Officers authorised to seize offending ships.*
22. *Powers of officers authorised to seize ships.*
23. *Special power of Secretary of State or chief executive authority to detain ship.*
24. *Special power of local authority to detain ship.*
25. *Power of Secretary of State or executive authority to grant search warrant.*
26. *Exercise of powers of Secretary of State or chief executive authority.*
27. *Appeal from Court of Admiralty.*
28. *Indemnity to officers.*
29. *Indemnity to Secretary of State or chief executive authority.*

*Interpretation Clause.*

30. *Interpretation of terms.*

*Repeal of Acts, and Saving Clauses.*

31. *Repeal of Foreign Enlistment Act.*
32. *Saving as to commissioned foreign ships.*
33. *Penalties not to extend to persons entering into military service in Asia.*

An Act to regulate the conduct of Her Majesty's Subjects during the existence of hostilities between foreign states with which Her Majesty is at peace.  
(9th August 1870.)

WHEREAS it is expedient to make provision for the regulation of the conduct of Her Majesty's subjects during the existence of hostilities between foreign states with which Her Majesty is at peace:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

*Preliminary.*

1. This Act may be cited for all purposes as "The Foreign Enlistment Act, 1870."
2. This Act shall extend to all the dominions of Her Majesty, including the adjacent territorial waters.

3. This Act shall come into operation in the United Kingdom immediately on the passing thereof, and shall be proclaimed in every British possession by the governor thereof as soon as may be after he receives notice of this Act, and shall come into operation in that British possession on the day of such proclamation, and the time at which this Act comes into operation in any place is, as respects such place, in this Act referred to as the commencement of this Act.

*Illegal Enlistment.*

4. If any person, without the license of Her Majesty, being a British subject, within or without Her Majesty's dominions, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state at war with any foreign state at peace with Her Majesty, and in this Act referred to as a friendly state, or whether a British subject or not within Her Majesty's dominions, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign state as aforesaid,—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

5. If any person, without the license of Her Majesty, being a British subject, quits or goes on board any ship with a view of quitting Her Majesty's dominions, with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state, or whether a British subject or not, within Her Majesty's dominions, induces any other person to quit or to go on board any ship with a view of quitting Her Majesty's dominions with the like intent,—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

6. If any person induces any other person to quit Her Majesty's dominions or to embark on any ship within Her Majesty's dominions under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state,—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

7. If the master or owner of any ship, without the license of Her Majesty, knowingly either takes on board, or engages to take on board, or has on board such ship within Her Majesty's dominions any of the following persons, in this Act referred to as illegally enlisted persons; that is to say,

- (1.) Any person who, being a British subject within or without the dominions of Her Majesty, has, without the license of Her Majesty, accepted or agreed to accept any commission or engagement in the military or naval service of any foreign state at war with any friendly state:
- (2.) Any person, being a British subject, who, without the license of Her Majesty, is about to quit Her Majesty's dominions

with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state:

- (3.) Any person who has been induced to embark under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state:

Such master or owner shall be guilty of an offence against this Act, and the following consequences shall ensue; that is to say,

- (1.) The offender shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour: and
- (2.) Such ship shall be detained until the trial and conviction or acquittal of the master or owner, and until all penalties inflicted on the master or owner have been paid, or the master or owner has given security for the payment of such penalties to the satisfaction of two justices of the peace, or other magistrate or magistrates having the authority of two justices of the peace: and
- (3.) All illegally enlisted persons shall immediately on the discovery of the offence be taken on shore, and shall not be allowed to return to the ship.

#### *Illegal Shipbuilding and Illegal Expeditions.*

8. If any person within Her Majesty's dominions, without the license of Her Majesty, does any of the following acts; that is to say,—

- (1.) Builds or agrees to build, or causes to be built any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state: or
- (2.) Issues or delivers any commission for any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state: or
- (3.) Equips any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state: or
- (4.) Despatches, or causes or allows to be despatched, any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be

employed in the military or naval service of any foreign state at war with any friendly state :

Such person shall be deemed to have committed an offence against this Act, and the following consequences shall ensue :

(1.) The offender shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour :

(2.) The ship in respect of which any such offence is committed, and her equipment, shall be forfeited to Her Majesty :

Provided that a person building, causing to be built, or equipping a ship in any of the cases aforesaid, in pursuance of a contract made before the commencement of such war as aforesaid, shall not be liable to any of the penalties imposed by this section in respect of such building or equipping if he satisfies the conditions following; (that is to say.)

(1.) If forthwith upon a proclamation of neutrality being issued by Her Majesty he gives notice to the Secretary of State that he is so building, causing to be built, or equipping such ship, and furnishes such particulars of the contract and of any matters relating to, or done, or to be done under the contract as may be required by the Secretary of State :

(2.) If he gives such security, and takes and permits to be taken such other measures, if any, as the Secretary of State may prescribe for ensuring that such ship shall not be despatched, delivered, or removed without the license of Her Majesty until the termination of such war as aforesaid.

9. Where any ship is built by order of or on behalf of any foreign state when at war with a friendly state, or is delivered to or to the order of such foreign state, or any person who to the knowledge of the person building is an agent of such foreign state, or is paid for by such foreign state or such agent, and is employed in the military or naval service of such foreign state, such ship shall, until the contrary is proved, be deemed to have been built with a view to being so employed, and the burden shall lie on the builder of such ship of proving that he did not know that the ship was intended to be so employed in the military or naval service of such foreign state.

10. If any person within the dominions of Her Majesty, and without the license of Her Majesty,—

By adding to the number of the guns, or by changing those on board for other guns, or by the addition of any equipment for war, increases

or augments, or procures to be increased or augmented, or is knowingly concerned in increasing or augmenting the warlike force of any ship which at the time of her being within the dominions of Her Majesty was a ship in the military or naval service of any foreign state at war with any friendly state,—

Such person shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

11. If any person within the limits of Her Majesty's dominions, and without the license of Her Majesty,—

Prepares or fits out any naval or military expedition to proceed against the dominions of any friendly state, the following consequences shall ensue :

(1.) Every person engaged in such preparation or fitting out, or assisting therein, or employed in any capacity in such expedition, shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour :

(2.) All ships, and their equipments, and all arms and munitions of war, used in or forming part of such expedition, shall be forfeited to Her Majesty.

12. Any person who aids, abets, counsels, or procures the commission of any offence against this Act shall be liable to be tried and punished as a principal offender.

13. The term of imprisonment to be awarded in respect of any offence against this Act shall not exceed two years.

#### *Illegal Prize.*

14. If, during the continuance of any war in which Her Majesty may be neutral, any ship, goods, or merchandise captured as prize of war within the territorial jurisdiction of Her Majesty, in violation of the neutrality of this realm, or captured by any ship which may have been built, equipped, commissioned, or despatched, or the force of which may have been augmented, contrary to the provisions of this Act, are brought within the limits of Her Majesty's dominions by the captor, or any agent of the captor, or by any person having come into possession thereof with knowledge that the same was prize of war so

captured as aforesaid, it shall be lawful for the original owner of such prize, or his agent, or for any person authorised in that behalf by the Government of the foreign state to which such owner belongs, to make application to the Court of Admiralty for seizure and detention of such prize, and the court shall, on due proof of the facts, order such prize to be restored.

Every such order shall be executed and carried into effect in the same manner, and subject to the same right of appeal, as in case of any order made in the exercise of the ordinary jurisdiction of such court; and in the meantime and until a final order has been made on such application the court shall have power to make all such provisional and other orders as to the care or custody of such captured ship, goods, or merchandise, and (if the same be of perishable nature, or incurring risk of deterioration,) for the sale thereof, and with respect to the deposit or investment of the proceeds of any such sale, as may be made by such court in the exercise of its ordinary jurisdiction.

#### *General Provision.*

15. For the purposes of this Act, a license by Her Majesty shall be under the sign manual of Her Majesty, or be signified by Order in Council or by proclamation of Her Majesty.

#### *Legal Procedure.*

16. Any offence against this Act shall, for all purposes of and incidental to the trial and punishment of any person guilty of any such offence, be deemed to have been committed either in the place in which the offence was wholly or partly committed, or in any place within Her Majesty's dominions in which the person who committed such offence may be.

17. Any offence against this Act may be described in any indictment or other document relating to such offence, in cases where the mode of trial requires such a description, as having been committed at the place where it was wholly or partly committed, or it may be averred generally to have been committed within Her Majesty's dominions, and the venue or local description in the margin may be that of the county, city, or place in which the trial is held.

18. The following authorities, that is to say, in the United Kingdom any judge of a superior court, in any other place within the jurisdiction of any British court of justice, such court, or, if there are more courts than one, the court having the highest criminal jurisdiction in that place, may, by warrant or instrument in the nature of a warrant in this section included in the term "warrant," direct that any offender charged with an offence against this Act shall be removed to some other place in Her Majesty's dominions

for trial in cases where it appears to the authority granting the warrant that the removal of such offender would be conducive to the interests of justice, and any prisoner so removed shall be triable at the place to which he is removed, in the same manner as if his offence had been committed at such place.

Any warrant for the purposes of this section may be addressed to the master of any ship or to any other person or persons, and the person or persons to whom such warrant is addressed shall have power to convey the prisoner therein named to any place or places named in such warrant, and to deliver him, when arrived at such place or places, into the custody of any authority designated by such warrant.

Every prisoner shall, during the time of his removal under any such warrant as aforesaid, be deemed to be in the legal custody of the person or persons empowered to remove him.

19. All proceedings for the condemnation and forfeiture of a ship, or ship and equipment, or arms and munitions of war, in pursuance of this Act, shall require the sanction of the Secretary of State or such chief executive authority as is in this Act mentioned, and shall be had in the Court of Admiralty, and not in any other court; and the Court of Admiralty shall, in addition to any power given to the court by this Act, have in respect of any ship or other matter brought before it in pursuance of this Act all powers which it has in the case of a ship or matter brought before it in the exercise of its ordinary jurisdiction.

20. Where any offence against this Act has been committed by any person by reason whereof a ship, or ship and equipment, or arms and munitions of war, has or have become liable to forfeiture, proceedings may be instituted, contemporaneously or not, as may be thought fit, against the offender in any court having jurisdiction of the offence, and against the ship, or ship and equipment, or arms and munitions of war, for the forfeiture in the Court of Admiralty; but it shall not be necessary to take proceedings against the offender because proceedings are instituted for the forfeiture, or to take proceedings for the forfeiture, because proceedings are taken against the offender.

21. The following officers, that is to say,

(1.) Any officer of customs in the United Kingdom, subject nevertheless to any special or general instructions from the Commissioners of Customs, or any officer of the Board of Trade, subject nevertheless to any special or general instructions from the Board of Trade;



- (2.) Any officer of customs or public officer in any British possession, subject nevertheless to any special or general instructions from the governor of such possession;
- (3.) Any commissioned officer on full pay in the military service of the Crown, subject nevertheless to any special or general instructions from his commanding officer;
- (4.) Any commissioned officer on full pay in the naval service of the Crown, subject nevertheless to any special or general instructions from the Admiralty or his superior officer.

may seize or detain any ship liable to be seized or detained in pursuance of this Act, and such officers are in this Act referred to as the "local authority;" but nothing in this Act contained shall derogate from the power of the Court of Admiralty to direct any ship to be seized or detained by any officer by whom such court may have power under its ordinary jurisdiction to direct a ship to be seized or detained.

22. Any officer authorised to seize or detain any ship in respect of any offence against this Act may, for the purpose of enforcing such seizure or detention, call to his aid any constable or officers of police, or any officers of Her Majesty's army or navy or marines, or any excise officers or officers of customs, or any harbour-master or dock-master, or any officers having authority by law to make seizures of ships, and may put on board any ship so seized or detained any one or more of such officers to take charge of the same, and to enforce the provisions of this Act, and any officer seizing or detaining any ship under this Act may use force, if necessary, for the purpose of enforcing seizure or detention, and if any person is killed or maimed by reason of his resisting such officer in the execution of his duties, or any person acting under his orders, such officer so seizing or detaining the ship, or other person, shall be freely and fully indemnified as well against the Queen's Majesty, her heirs and successors, as against all persons so killed, maimed, or hurt.

23. If the Secretary of State or the chief executive authority is satisfied that there is a reasonable and probable cause for believing that a ship within Her Majesty's dominions has been or is being built, commissioned, or equipped contrary to this Act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be despatched contrary to this Act, such Secretary of State or chief executive authority shall have power to issue a warrant stating that there is reasonable and probable cause for believing as aforesaid, and upon such warrant the local authority shall have power to seize and search such ship, and to detain the same until it has

been either condemned or released by process of law, or in manner herein-after mentioned.

The owner of the ship so detained, or his agent, may apply to the Court of Admiralty for its release, and the court shall as soon as possible put the matter of such seizure and detention in course of trial between the applicant and the Crown.

If the applicant establish to the satisfaction of the court that the ship was not and is not being built, commissioned, or equipped, or intended to be despatched contrary to this Act, the ship shall be released and restored.

If the applicant fail to establish to the satisfaction of the court that the ship was not and is not being built, commissioned, or equipped, or intended to be despatched contrary to this Act, then the ship shall be detained till released by order of the Secretary of State or chief executive authority.

The court may in cases where no proceedings are pending for its condemnation release any ship detained under this section on the owner giving security to the satisfaction of the court that the ship shall not be employed contrary to this Act, notwithstanding that the applicant may have failed to establish to the satisfaction of the court that the ship was not and is not being built, commissioned, or intended to be despatched contrary to this Act. The Secretary of State or the chief executive authority may likewise release any ship detained under this section on the owner giving security to the satisfaction of such Secretary of State or chief executive authority that the ship shall not be employed contrary to this Act, or may release the ship without such security if the Secretary of State or chief executive authority think fit so to release the same.

If the court be of opinion that there was not reasonable and probable cause for the detention, and if no such cause appear in the course of the proceedings, the court shall have power to declare that the owner is to be indemnified by the payment of costs and damages in respect of the detention, the amount thereof to be assessed by the court, and any amount so assessed shall be payable by the Commissioners of the Treasury out of any moneys legally applicable for that purpose. The Court of Admiralty shall also have power to make a like order for the indemnity of the owner, on the application of such owner to the court, in a summary way, in cases where the ship is released by the order of the Secretary of State or the chief executive authority, before any application is made by the owner or his agent to the court for such release.

Nothing in this section contained shall affect any proceedings instituted or to be instituted for the condemnation of any ship detained under this section where such ship is liable to forfeiture, subject to this provision, that if such ship is

restored in pursuance of this section all proceedings for such condemnation shall be stayed; and where the court declares that the owner is to be indemnified by the payment of costs and damages for the detainer, all costs, charges, and expenses incurred by such owner in or about any proceedings for the condemnation of such ship shall be added to the costs and damages payable to him in respect of the detention of the ship.

Nothing in this section contained shall apply to any foreign non-commissioned ship despatched from any part of Her Majesty's dominions after having come within them under stress of weather or in the course of a peaceful voyage, and upon which ship no fitting out or equipping of a war-like character has taken place in this country.

24. Where it is represented to any local authority, as defined by this Act, and such local authority believes the representation, that there is a reasonable and probable cause for believing that a ship within Her Majesty's dominions has been or is being built, commissioned, or equipped contrary to this Act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be despatched contrary to this Act, it shall be the duty of such local authority to detain such ship, and forthwith to communicate the fact of such detention to the Secretary of State or chief executive authority.

Upon the receipt of such communication the Secretary of State or chief executive authority may order the ship to be released if he thinks there is no cause for detaining her, but if satisfied that there is reasonable and probable cause for believing that such ship was built, commissioned, or equipped or intended to be despatched in contravention of this Act, he shall issue his warrant stating that there is reasonable and probable cause for believing as aforesaid, and upon such warrant being issued further proceedings shall be had as in cases where the seizure or detention has taken place on a warrant issued by the Secretary of State without any communication from the local authority.

Where the Secretary of State or chief executive authority orders the ship to be released on the receipt of a communication from the local authority without issuing his warrant, the owner of the ship shall be indemnified by the payment of costs and damages in respect of the detention upon application to the Court of Admiralty, in a summary way, in like manner as he is entitled to be indemnified where the Secretary of State having issued his warrant under this Act releases the ship before any application is made by the owner or his agent to the court for such release.

25. The Secretary of State or the chief executive authority may, by warrant, empower any person to enter any dockyard or other place

within Her Majesty's dominions, and inquire as to the destination of any ship which may appear to him to be intended to be employed in the naval or military service of any foreign state at war with a friendly state, and to search such ship.

26. Any powers or jurisdiction by this Act given to the Secretary of State may be exercised by him throughout the dominions of Her Majesty, and such powers and jurisdiction may also be exercised by any of the following officers, in this Act referred to as the chief executive authority, within their respective jurisdictions; that is to say,

- (1) In Ireland by the Lord Lieutenant or other the chief governor or governors of Ireland for the time being, or the chief secretary to the Lord Lieutenant:
- (2) In Jersey by the Lieutenant Governor:
- (3) In Guernsey, Alderney, and Sark, and the dependent islands, by the Lieutenant Governor:
- (4) In the Isle of Man by the Lieutenant Governor:
- (5) In any British possession by the Governor.

A copy of any warrant issued by a Secretary of State or by any officer authorised in pursuance of this Act to issue such warrant in Ireland, the Channel Islands, or the Isle of Man shall be laid before Parliament.

27. An appeal may be had from any decision of a Court of Admiralty under this Act to the same tribunal and in the same manner to and in which an appeal may be had in cases within the ordinary jurisdiction of the Court as a Court of Admiralty.

28. Subject to the provisions of this Act providing for the award of damages in certain cases in respect of the seizure or detention of a ship by the Court of Admiralty, no damages shall be payable, and no officer or local authority shall be responsible, either civilly or criminally, in respect of the seizure or detention of any ship in pursuance of this Act.

29. The Secretary of State shall not, nor shall the chief executive authority, be responsible in any action or other legal proceedings whatsoever for any warrant issued by him in pursuance of this Act, or be examinable as a witness, except at his own request, in any court of justice in respect of the circumstances which led to the issue of the warrant.

#### *Interpretation Clause.*

30. In this Act, if not inconsistent with the context, the following terms have the meanings

herein-after respectively assigned to them; that is to say,

"Foreign state" includes any foreign prince, colony, province, or part of any province or people, or any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people:

"Military service" shall include military telegraphy and any other employment whatever, in or in connexion with any military operation:

"Naval service" shall, as respects a person, include service as a marine, employment as a pilot in piloting or directing the course of a ship of war or other ship when such ship of war or other ship is being used in any military or naval operation, and any employment whatever on board a ship of war, transport, store ship, privateer or ship under letters of marque; and as respects a ship, include any user of a ship as a transport, store ship, privateer or ship under letters of marque:

"United Kingdom" includes the Isle of Man, the Channel Islands, and other adjacent islands:

"British possession" means any territory, colony, or place being part of Her Majesty's dominions, and not part of the United Kingdom, as defined by this Act:

"The Secretary of State" shall mean any one of Her Majesty's Principal Secretaries of State:

"The Governor" shall as respects India mean the Governor General or the governor of any presidency, and where a British possession consists of several constituent colonies, mean the Governor General of the whole possession or the Governor of any of the constituent colonies, and as respects any other British possession it shall mean the officer for the time being administering the government of such possession; also any person acting for or in the capacity of a governor shall be included under the term "Governor":

"Court of Admiralty" shall mean the High Court of Admiralty of England or Ireland, the Court of Session of Scotland, or any Vice-Admiralty Court within Her Majesty's dominions:

"Ship" shall include any description of boat, vessel, floating battery, or floating craft; also any description of boat, vessel, or other craft or battery, made to move either on the

surface of or under water, or sometimes on the surface of and sometimes under water:

"Building" in relation to a ship shall include the doing any act towards or incidental to the construction of a ship, and all words having relation to building shall be construed accordingly:

"Equipping" in relation to a ship shall include the furnishing a ship with any tackle, apparel, furniture, provisions, arms, munitions, or stores, or any other thing which is used in or about a ship for the purpose of fitting or adapting her for the sea or for naval service, and all words relating to equipping shall be construed accordingly:

"Ship and equipment" shall include a ship and everything in or belonging to a ship:

"Master" shall include any person having the charge or command of a ship.

#### *Repeal of Acts, and Saving Clauses.*

31. From and after the commencement of this Act, an Act passed in the fifty-ninth year of the reign of His late Majesty King George the Third chapter sixty-nine, intituled "An Act to prevent the enlisting or engagement of His Majesty's subjects to serve in foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes, without His Majesty's license," shall be repealed: Provided that such repeal shall not affect any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before this Act comes into operation, nor the institution of any investigation or legal proceeding, or any other remedy for enforcing any such penalty, forfeiture, or punishment as aforesaid.

32. Nothing in this Act contained shall subject to forfeiture any commissioned ship of any foreign state, or give to any British court over or in respect of any ship entitled to recognition as a commissioned ship of any foreign state any jurisdiction which it would not have had if this Act had not passed.

33. Nothing in this Act contained shall extend or be construed to extend to subject to any penalty any person who enters into the military service of any prince, state, or potentate in Asia, with such leave or license as is for the time being required by law in the case of subjects of Her Majesty entering into the military service of princes, states, or potentates in Asia.

## CHAP. 91.

*The Clerical Disabilities Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. Short title.
  2. Interpretation.
  3. Execution and inrolment of deed of relinquishment.
  4. Recording by bishop of deed of relinquishment and consequences thereof.
  5. Provision for pending proceedings before recording in registry.
  6. Service at place of residence stated.
  7. Copy of record to be evidence.
  8. Saving for pecuniary liabilities.
- Schedules.

**An Act for the relief of persons admitted to the office of Priest or Deacon in the Church of England.**

(9th August 1870.)

WHEREAS it is expedient that relief be given in respect of civil disabilities and in certain other respects to persons who have been admitted to the office of priest or of deacon in the Church of England:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as The Clerical Disabilities Act, 1870.

2. In this Act—

The term "The Church of England" means the Church of England as by law established;

The term "minister" means a priest or a deacon;

The terms "preferment," "bishop," and "diocese" respectively have the same meaning as in the Act thirdly mentioned in the first schedule to this Act.

3. Any person admitted (before or after the passing of this Act) to the office of minister in the Church of England may, after having resigned any and every preferment held by him, do the following things:—

- (1.) He may execute a deed of relinquishment in the form given in the second schedule to this Act;
- (2.) He may cause the same to be inrolled in the High Court of Chancery;
- (3.) He may deliver an office copy of the inrolment to the bishop of the diocese in which he last held a preferment, or if he

has not held any preferment then to the bishop of the diocese in which he is resident, in either case stating his place of residence;

- (4.) He may give notice of his having so done to the archbishop of the province in which that diocese is situate.

4. At the expiration of six months after an office copy of the inrolment of a deed of relinquishment has been so delivered to a bishop, he or his successor in office shall, on the application of the person executing the deed, cause the deed to be recorded in the registry of the diocese, and thereupon and thenceforth (but not sooner) the following consequences shall ensue with respect to the person executing the deed:—

- (1.) He shall be incapable of officiating or acting in any manner as a minister of the Church of England, and of taking or holding any preferment therein, and shall cease to enjoy all rights, privileges, advantages, and exemptions attached to the office of minister in the Church of England;
- (2.) Every license, office, and place held by him for which it is by law an indispensable qualification that the holder thereof should be a minister of the Church of England shall be ipso facto determined and void;
- (3.) He shall be by virtue of this Act discharged and free from all disabilities, disqualifications, restraints, and prohibitions to which, if this Act had not been passed, he would, by force of any of the enactments mentioned in the first schedule to this Act or of any other law, have been subject as a person who had been admitted to the office of minister in the Church of England, and from all jurisdiction, penalties, censures, and proceedings to which, if this Act had not been passed, he would or might, under any of the same enactments or any other law, have been

amenable or liable in consequence of his having been so admitted and of any act or thing done or omitted by him after such admission.

5. Provided, that if within the aforesaid period of six months the bishop to whom an office copy of the enrolment of a deed of relinquishment is delivered, or his successor in office, has notice of proceedings pending against the person executing the deed as a person who had been admitted to the office of minister in the Church of England, the bishop shall, on the application of that person, cause the deed to be recorded in the registry of the diocese on the termination of those proceedings by a definitive sentence, or interlocutory decree having the force and effect of a definitive sentence, and execution thereof, but not sooner.

6. For the purposes of any proceedings instituted within the aforesaid period of six months against a person executing a deed of relinquishment under this Act, the service of any citation, notice, or other document at the place stated by him in pursuance of this Act as his place of residence shall be good service.

7. A copy of the record in the registry of a diocese of a deed of relinquishment under this Act, duly extracted and certified by the registrar of the bishop, shall be evidence of the due execution, enrolment, and recording of the deed, and of the fulfilment of all the requirements of this Act in relation thereto.

The registrar of the bishop shall, on the application of the person executing the deed, give to him a copy of the record thereof duly extracted and certified, on payment of a fee not exceeding ten shillings for the recording and copy thereof.

8. Nothing in this Act shall relieve any person or his estate from any liability in respect of dilapidations or from any debt or other pecuniary liability incurred or accrued before or after his execution of a deed of relinquishment under this Act, and the same may be enforced and recovered as if this Act had not been passed.

## SCHEDULES.

### THE FIRST SCHEDULE.

#### Enactments referred to.

(1.) The Act of the session of the forty-first year of the reign of King George the Third (chapter sixty-three) "to remove doubts respecting the eligibility of persons in holy orders to sit in the House of Commons" as far as it relates to persons ordained to the office of priest or of deacon before their election to serve in Parliament.

(2.) Section twenty-eight of the Act of the session of the fifth and sixth years of the reign of King William the Fourth (chapter seventy-six) "to provide for the regulation of municipal corporations in England and Wales."

(3.) The Act of the session of the third and fourth years of Her Majesty's reign (chapter eighty-six) "for better enforcing church discipline."

### THE SECOND SCHEDULE.

#### Form of Deed of Relinquishment.

Know all men by these presents, that I *A.B.* of having been admitted to the office of priest [or deacon, *as the case may be,*] in the Church of England, [and having resigned here to be inserted description of late preferment, if any,] do hereby, in pursuance of The Clerical Disabilities Act, 1870, declare that I relinquish all rights, privileges, advantages, and exemptions of the office as by law belonging to it. In witness whereof I have hereunto set my hand and seal, this                      day of                      18                     

(Signed) *A.B.* (S.S.)

Executed by *A.B.* in presence of

*C.D.* of

[address and description of witness].

## CHAP. 92.

### The Municipal Elections Amendment (Scotland) Act, 1870.

#### ABSTRACT OF THE ENACTMENTS.

1. Short title.
2. Interpretation of terms.
3. Election of councillors where number of persons proposed does not exceed vacancies to be supplied.
4. Election of Commissioners or trustees along with town councillors.

5. *Order of retirement of councillors to be determined by the Council.*
6. *Preparation of municipal registers in burghs which do not return members to Parliament.*
7. *Cost of municipal registers.*
8. *Municipal elections in burghs divided into wards under 31 & 32 Viet. c. 108.*
9. *Expense of municipal elections may be defrayed out of assessments for registration.*  
*Schedule.*

**An Act to amend the laws for the Election of the Magistrates and Councillors of Royal and Parliamentary Burghs in Scotland.**

(9th August 1870.)

WHEREAS it is expedient to amend the laws relating to the election of the magistrates and councillors of Royal and Parliamentary Burghs in Scotland :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as The Municipal Elections Amendment (Scotland) Act, 1870.

2. The following expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction ; that is to say,

"Burgh" shall mean any Royal or Parliamentary Burgh in Scotland :

"Election Acts" shall mean the Acts third and fourth William the Fourth, chapters seventy-six and seventy-seven, and thirty-first and thirty-second Victoria, chapter one hundred and eight, and any other Acts relating to the election of magistrates and councillors of Royal and Parliamentary Burghs in Scotland which may be in force for the time :

"Registration Acts" shall mean the Act nineteenth and twentieth Victoria, chapter fifty-eight, as amended by the Act thirty-first and thirty-second Victoria, chapter forty-eight, and any other Act relating to the registration of persons entitled to vote in the election of members to serve in Parliament for burghs in Scotland which may be in force for the time :

"The assessor" shall mean the assessor of the burgh in and for which he is assessor, appointed and acting under the Acts for the valuation of lands and heritages in Scotland, or any of them.

3. Where at any election of town councillors in any burgh the number of persons whose names

have been intimated to the town clerk, under the provisions of the Act thirty-first and thirty-second Victoria, chapter one hundred and eight, as persons proposed for election in such burgh, or any ward of such burgh if divided into wards, does not exceed the vacancies to be supplied in such burgh or ward, as the case may be, the town clerk shall, in the public notice to be given by him, as provided by the said Act, of the names of the persons so intimated to him, notify that in respect the number of persons proposed for election does not exceed the number of vacancies to be supplied in the burgh or ward, as the case may be, there will be no poll, and that the persons so proposed will be declared to be elected as councillors of the burgh ; and such notification may be made by an addition in the terms set forth in the schedule to this Act, or in similar terms, to the notice required by the said Act ; and on the day appointed for declaring the election the persons so proposed shall be declared to be duly elected as councillors of the burgh, in the same manner as if they had been elected as councillors under the provisions of the Election Acts, and shall be deemed to be duly elected accordingly ; and every such election of councillors under the provisions of this Act shall be in all respects valid, and notice thereof shall be given to the persons elected in the same manner and to the same effect as is provided by the Election Acts.

4. Where by any Act of Parliament it is provided that any commissioners or trustees under such Act are to be elected by the municipal electors, or at the same time or along with the town councillors of any burgh, the provisions of the Election Acts shall be applicable to every such election of commissioners or trustees ; and where at any such election the number of persons proposed for election as commissioners or trustees does not exceed the number of vacancies to be supplied, the town clerk or other person conducting such election shall notify that there will be no poll ; and such election shall be proceeded with and declared in the same manner as is herein-before provided with respect to the election of town councillors.

5. Where in any burgh or ward two or more councillors have been elected on the same day under the provisions of this Act, or have been elected by an equality of votes under the pro-

visions of the Election Acts, the majority of the town council (including the councillors so elected) shall determine the order in which the councillors so elected shall retire from the town council.

6. In every royal burgh not now entitled to return or contribute to return a member to Parliament, the assessor shall, on or before the fifteenth day of September in the year one thousand eight hundred and seventy-one, and in every year thereafter, make out or cause to be made out a list of all persons who may be entitled to vote in the election of councillors for such burgh, under the provisions of the Act thirty-first and thirty-second Victoria, chapter one hundred and eight, according to the form No. 1 of the schedule A. to the Act nineteenth and twentieth Victoria, chapter fifty-eight; and the same procedure shall be followed with respect to the preparation and publication of every such list, and the completion and revision of the register of voters for such burgh, as is provided by the Act nineteenth and twentieth Victoria, chapter fifty-eight, as amended by the Act thirty-first and thirty-second Victoria, chapter forty-eight, with respect to the lists and registers of voters to be made out and completed under the provisions and for the purposes of those Acts; and the lists of voters for any burgh made up, completed, and revised under the provisions of the said Acts and this Act shall be signed by the town clerk, and shall be the register of persons entitled to vote in such burgh at any election of town councillors which shall take place in and for such burgh between the thirty-first day of October in the year in which such register shall have been made up and the first day of November in the succeeding year; and the said register shall be printed, and copies thereof shall be kept by the town clerk and delivered to persons applying therefor, in the same manner and on the same terms as is provided by the Act nineteenth and twentieth Victoria, chapter fifty-eight.

7. The whole costs and expenses of making up, completing, revising, and printing the register of voters in any such burgh, or incident thereto, shall be ascertained and fixed, and the amount thereof shall be assessed, levied, and collected, in the same manner as the costs and expenses attending the annual registration under the Act nineteenth and twentieth Victoria, chapter fifty-eight, are by the said Act appointed to be ascertained, fixed, assessed, levied, and collected; and the provisions of the said Act shall be applicable

to the costs and expenses of registration under this Act.

8. Where any burgh has been or shall be divided into wards under the provisions of the Act thirty-first and thirty-second Victoria, chapter one hundred and eight, the town councillors of such burgh shall be elected in the same manner as town councillors are elected in burghs divided into wards or districts under the provisions of the Acts third and fourth William the Fourth, chapters seventy-six and seventy-seven, and the provisions of these Acts respectively with reference to the election of councillors shall be and are hereby made applicable to elections of councillors in burghs which have been or shall be divided into wards under the provisions of the said Act thirty-first and thirty-second Victoria, chapter one hundred and eight.

9. The town council of any burgh may from time to time resolve that the costs and expenses of and incident to the election of the town councillors of such burgh, or of any trustees, commissioners, or other persons who are appointed or have been in use to be elected along with such town councillors, shall be defrayed out of the assessments imposed or levied in such burgh under the provisions and for the purposes of the Registration Acts; and after such resolution shall have been adopted, the costs and expenses of and incident to such elections, as ascertained and fixed by the town council, shall be added to the costs and expenses attending the annual registration in such burgh, and shall be included in the assessment to be imposed and levied under the provisions and for the purposes of the Registration Acts.

---

#### SCHEDULE.

---

And I further give notice, in terms of The Municipal Elections Amendment (Scotland) Act, 1870, that in respect the number of persons proposed for election as councillors in the burgh [or in the ward (or wards) or commissioners or trustees, as the case may be,] does not exceed the number of vacancies to be supplied in the burgh [or ward] there will be no poll, and the persons so proposed will on the day appointed for declaring the election be declared to be elected councillors of the burgh [or commissioners or trustees, as the case may be].

## CHAP. 93.

*Married Women's Property Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Earnings of married women to be deemed their own property.*
2. *Deposits in savings banks by a married woman to be deemed her separate property.*
3. *As to a married woman's property in the funds.*
4. *As to a married woman's property in a joint stock company.*
5. *As to a married woman's property in a society.*
6. *Deposit of moneys in fraud of creditors intalid.*
7. *Personal property not exceeding 200*l.* coming to a married woman to be her own.*
8. *Freehold property coming to a married woman, rents and profits only to be her own.*
9. *How questions as to ownership of property to be settled.*
10. *Married woman may effect policy of insurance. As to insurance of a husband for benefit of his wife.*
11. *Married women may maintain an action.*
12. *Husband not to be liable on his wife's contracts before marriage.*
13. *Married woman to be liable to the parish for the maintenance of her husband.*
14. *Married woman to be liable to the parish for the maintenance of her children.*
15. *Commencement of Act.*
16. *Act not to extend to Scotland.*
17. *Short title.*

An Act to amend the Law relating to  
the Property of Married Women.

(9th August 1870.)

WHEREAS it is desirable to amend the law of property and contract with respect to married women:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The wages and earnings of any married woman acquired or gained by her after the passing of this Act in any employment, occupation, or trade in which she is engaged or which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and all investments of such wages, earnings, money, or property, shall be deemed and taken to be property held and settled to her separate use, independent of any husband to whom she may be married, and her receipts alone shall be a good discharge for such wages, earnings, money, and property.

2. Notwithstanding any provision to the contrary in the Act of the tenth year of George the Fourth, chapter twenty-four, enabling the Commissioners for the Reduction of the National Debt to grant life annuities and annuities for terms of years, or in the Acts relating to savings banks and post-office savings banks, any deposit

hereafter made and any annuity granted by the said Commissioners under any of the said Acts in the name of a married woman, or in the name of a woman who may marry after such deposit or grant, shall be deemed to be the separate property of such woman, and the same shall be accounted for and paid to her as if she were an unmarried woman; provided that if any such deposit is made by, or such annuity granted to, a married woman by means of moneys of her husband without his consent, the Court may, upon an application under section nine of this Act, order such deposit or annuity, or any part thereof, to be paid to the husband.

3. Any married woman, or any woman about to be married, may apply to the Governor and Company of the Bank of England, or to the Governor and Company of the Bank of Ireland, by a form to be provided by the governor of each of the said banks and company for this purpose, that any sum forming part of the public stocks and funds, and not being less than twenty pounds, to which the woman so applying is entitled, or which she is about to acquire, may be transferred to or made to stand in the books of the governor and company to whom such application is made in the name or intended name of the woman as a married woman entitled to her separate use; and on such sum being entered in the books of the said governor and company accordingly the same shall be deemed to be the separate property of such woman, and shall be transferred and the dividends paid as if she were an unmarried woman; provided that if



any such investment in the funds is made by a married woman by means of moneys of her husband without his consent, the Court may, upon an application under section nine of this Act, order such investment and the dividends thereof, or any part thereof, to be transferred and paid to the husband.

4. Any married woman, or any woman about to be married, may apply in writing to the directors or managers of any incorporated or joint stock company that any fully paid up shares, or any debenture or debenture stock, or any stock of such company, to the holding of which no liability is attached, and to which the woman so applying is entitled, may be registered in the books of the said company in the name or intended name of the woman as a married woman entitled to her separate use, and it shall be the duty of such directors or managers to register such shares or stock accordingly, and the same upon being so registered shall be deemed to be the separate property of such woman, and shall be transferred and the dividends and profits paid as if she were an unmarried woman; provided that if any such investment as last mentioned is made by a married woman by means of moneys of her husband without his consent, the Court may, upon an application under section nine of this Act, order such investment and the dividends and profits thereon, or any part thereof, to be transferred and paid to the husband.

5. Any married woman, or any woman about to be married, may apply in writing to the committee of management of any industrial and provident society, or to the trustees of any friendly society, benefit building society, or loan society, duly registered, certified, or enrolled under the Acts relating to such societies respectively, that any share, benefit, debenture, right, or claim whatsoever in, to, or upon the funds of such society, to the holding of which share, benefit, or debenture no liability is attached, and to which the woman so applying is entitled, may be entered in the books of the society in the name or intended name of the woman as a married woman entitled to her separate use, and it shall be the duty of such committee or trustees to cause the same to be so entered, and thereupon such share, benefit, debenture, right, or claim shall be deemed to be the separate property of such woman, and shall be transferable and payable with all dividends and profits thereon as if she were an unmarried woman; provided that if any such share, benefit, debenture, right, or claim has been obtained by a married woman by means of moneys of her husband without his consent, the Court may, upon an application under section nine of this Act, order the same and the

dividends and profits thereon, or any part thereof, to be transferred and paid to the husband.

6. Nothing herein-before contained in reference to moneys deposited in or annuities granted by savings banks or moneys invested in the funds or in shares or stock of any company shall as against creditors of the husband give validity to any deposit or investment of moneys of the husband made in fraud of such creditors, and any moneys so deposited or invested may be followed as if this Act had not passed.

7. Where any woman married after the passing of this Act shall during her marriage become entitled to any personal property as next of kin or one of the next of kin of an intestate, or to any sum of money not exceeding two hundred pounds under any deed or will, such property shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to the woman for her separate use, and her receipts alone shall be a good discharge for the same.

8. Where any freehold, copyhold, or customaryhold property shall descend upon any woman married after the passing of this Act as heirress or co-heiress of an intestate, the rents and profits of such property shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to such woman for her separate use, and her receipts alone shall be a good discharge for the same.

9. In any question between husband and wife as to property declared by this Act to be the separate property of the wife, either party may apply by summons or motion in a summary way either to the Court of Chancery in England or Ireland according as such property is in England or Ireland, or in England (irrespective of the value of the property) the judge of the County Court of the district in which either party resides, and thereupon the judge may make such order, direct such inquiry, and award such costs, as he shall think fit; provided that any order made by such judge shall be subject to appeal in the same manner as the order of the same judge made in a pending suit or on an equitable plaint would have been, and the judge may, if either party so require, hear the application in his private room.

10. A married woman may effect a policy of insurance upon her own life or the life of her husband for her separate use, and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure accordingly, and the contract in such policy shall be as valid as if made with an unmarried woman.

A policy of insurance effected by any married man on his own life, and expressed upon the face of it to be for the benefit of his wife or of his

wife and children, or any of them, shall enure and be deemed a trust for the benefit of his wife for her separate use, and of his children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband or to his creditors, or form part of his estate. When the sum secured by the policy becomes payable, or at any time previously, a trustee thereof may be appointed by the Court of Chancery in England or in Ireland according as the policy of insurance was effected in England or in Ireland, or in England by the judge of the County Court of the district, or in Ireland by the chairman of the Civil Bill Court of the division of the county in which the insurance office is situated, and the receipt of such trustee shall be a good discharge to the office. If it shall be proved that the policy was effected and premiums paid by the husband with intent to defraud his creditors, they shall be entitled to receive out of the sum secured an amount equal to the premiums so paid.

11. A married woman may maintain an action in her own name for the recovery of any wages, earnings, money, and property by this Act declared to be her separate property, or of any property belonging to her before marriage, and which her husband shall, by writing under his hand, have agreed with her shall belong to her after marriage as her separate property, and she shall have in her own name the same remedies, both civil and criminal, against all persons whomsoever, for the protection and security of such wages, earnings, money, and property, and of any chattels or other property purchased or obtained by means thereof for her own use, as if such wages, earnings, money, chattels, and property belonged to her as an unmarried woman; and in any indictment or other proceeding it shall be sufficient to allege such wages, earnings, money, chattels, and property to be her property.

12. A husband shall not, by reason of any marriage which shall take place after this Act

has come into operation, be liable for the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and any property belonging to her for her separate use shall be liable to satisfy, such debts as if she had continued unmarried.

13. Where in England the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband as by the thirty-third section of "The Poor Law Amendment Act, 1868," they may now make and enforce against a husband for the maintenance of his wife who becomes chargeable to any union or parish. Where in Ireland relief is given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such relief is hereby declared to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable from such woman as if she were a feme sole by such and the same actions and proceedings as money lent.

14. A married woman having separate property shall be subject to all such liability for the maintenance of her children as a widow is now by law subject to for the maintenance of her children: Provided always, that nothing in this Act shall relieve her husband from any liability at present imposed upon him by law to maintain her children.

15. This Act shall come into operation at the time of the passing of this Act.

16. This Act shall not extend to Scotland.

17. This Act may be cited as the "Married Women's Property Act, 1870."

## CHAP. 94.

### *The Medical Officers Superannuation Act, 1870.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Power to guardians, with consent of Poor Law Board, to grant superannuation allowance to medical officers in certain cases.*
2. *No allowance to be allowed without a certificate of inspector.*
3. *Short title. Construction of Act.*

**An Act to provide for Superannuation Allowances to Medical Officers of Unions, Districts, and Parishes in England and Wales.**

(9th August 1870.)

WHEREAS it is expedient that provision should be made to enable superannuation allowances to be granted to medical officers of unions, districts, and parishes in England and Wales, who become disabled, either by infirmity or age, to discharge the duties of their offices :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The board of guardians of any union or parish, and the board of management of any district, may, at their discretion, with the consent of the Poor Law Board, grant to any medical officer of such union, district, or parish an annual allowance, under and subject to the provisions of the Act to provide for superannuation allow-

ances to officers of the unions, passed in the twenty-seventh and twenty-eighth year of the reign of Her Majesty, chapter forty-two, notwithstanding such medical officer shall not have devoted his entire time to the services of the union, district, or parish, and such allowance shall be paid out of the common fund of the union or district, or out of the poor rate of the parish, as the case may require, exclusively, and no contribution shall be made thereto out of any moneys voted by Parliament.

2. No allowance shall be obtained by any officer under this Act on the ground of permanent infirmity of mind or body unless a poor law inspector, or some person in that behalf authorised by the Poor Law Board, shall have first certified that in his opinion such officer has by reason of such infirmity become incapable of performing the duties of his office with efficiency.

3. This Act may be called "The Medical Officers Superannuation Act, 1870," and shall be construed in like manner as in the Poor Law Amendment Act, 1834, and the subsequent Acts extending or amending the same.

**CHAP. 95.**

***The Passengers Act Amendment Act, 1870.***

**ABSTRACT OF THE ENACTMENTS.**

1. *Short title.*
2. *Construction of Act.*
3. *Authority by Secretary of State to carry naval and military stores in passenger ships.*

**An Act to authorise the carriage of Naval and Military Stores in Passenger Ships.** (9th August 1870.)

WHEREAS by section twenty-nine of the Passengers Act, 1855, it is enacted that "no passenger ship shall clear out or proceed to sea if there shall be on board as cargo, horses, cattle, gunpowder, vitriol, lucifer matches, guano, or green hides, nor if there shall be on board any other article or number of articles, whether as cargo or ballast, which, by reason of the nature or quantity or mode of stowage thereof, shall, either singly or collectively, be deemed by the emigration officer at the port of clearance likely to endanger the health or lives of the passengers, or the safety of the ship:"

And whereas it is expedient that any of Her Majesty's Principal Secretaries of State should be empowered to authorise the carriage in passenger ships of naval and military stores whenever requisite for the public service :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as The Passengers Act Amendment Act, 1870.

2. This Act shall be construed as one with the Passengers Act, 1855, (in this Act referred to as the principal Act,) and the Passengers Act Amendment Act, 1863.

3. Any one of Her Majesty's Principal Secretaries of State may, by order under his hand, authorise the carriage as cargo in any passenger ship (subject to such conditions and directions as may be specified in the order) of naval and military stores for the public service, and such stores may, notwithstanding anything contained in the principal Act, be carried accordingly in such passenger ship.

Such order shall be addressed to the emigration officer or person performing the duties of emigra-

tion officer at the port of clearance, and shall be by him countersigned, and delivered to the master of the passenger ship to which it refers, and shall be delivered up by the master to the chief officer of Customs at the port where the stores are discharged.

The master shall comply with all the conditions and directions specified in the order, and non-compliance therewith shall be deemed non-compliance with the requirements of the said section twenty-nine of the principal Act.

#### CHAP. 96.

#### *The Appropriation Act, 1870.*

##### ABSTRACT OF THE ENACTMENTS.

##### *Grant out of Consolidated Fund.*

1. Issue of 24,281,493*l.* out of the Consolidated Fund.
2. Power for the Treasury to borrow.

##### *Appropriation of Grants.*

3. Appropriation of sums voted for supply service.
4. Treasury may, in certain cases of exigency, authorise expenditure unprovided for; provided that the aggregate grants for the navy services and for the army services respectively be not exceeded.
5. Sanction for navy and army expenditure for 1868-9 unprovided for.

##### *Permanent Regulations as to certain Payments.*

6. Regulations as to half pay.
7. Declarations to be made in certain cases before receipt of sums appropriated.
8. Short title of Act.

##### *Schedules.*

An Act to apply a sum out of the Consolidated Fund to the service of the year ending the thirty-first day of March one thousand eight hundred and seventy-one, and to appropriate the Supplies granted in this Session of Parliament. (10th August 1870.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

##### *Grant out of Consolidated Fund.*

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and seventy-one, the sum of twenty-four million two hundred and eighty-one thousand four hundred and ninety-three pounds.

2. The Commissioners of Her Majesty's Treasury may borrow, from time to time, on the credit of the said sum of twenty-four million two hundred and eighty-one thousand four hundred and ninety-three pounds, any sum or sums of equal or less amount in the whole, and shall repay the money so borrowed, with interest not exceeding five pounds per centum per annum out of the growing produce of the Consolidated Fund, at any period not later than the next succeeding

quarter to that in which the said sums were borrowed.

Any sums so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

#### *Appropriation of Grants.*

3. All sums granted by this Act and the other Acts mentioned in Schedule (A.) annexed to this Act out of the said Consolidated Fund towards making good the supply granted to Her Majesty, amounting, as appears by the said Schedule, in the aggregate to the sum of forty-two million eight hundred and forty-five thousand six hundred and eighty-four pounds seven shillings and twopence, are appropriated and shall be deemed to have been appropriated as from the date of the passing of the first of the Acts mentioned in the said Schedule (A.) for the purposes and services expressed in Schedule (B.) annexed hereto.

The abstract of schedules and schedules annexed hereto, with the notes (if any) to such schedules, shall be deemed to be part of this Act in the same manner as if they had been contained in the body thereof.

4. If a necessity arise for incurring expenditure not provided for in the sums appropriated to naval and military services by this Act, and which it may be detrimental to the public service to postpone until provision can be made for it by Parliament in the usual course, each of the departments entrusted with the control over the said services shall forthwith make application in writing to the Commissioners of Her Majesty's Treasury for their authority to defray temporarily such expenditure out of any surpluses which may have been or which may be effected by the saving of expenditure upon votes within the same department, and in such application the department shall represent to the Commissioners of the Treasury the circumstances which may render such additional expenditure necessary, and thereupon the said Commissioners may authorise the expenditure, unprovided for as aforesaid to be temporarily defrayed out of any surpluses which may have been or which may be effected as aforesaid upon votes within the same department; and a statement showing all cases in which the naval and military departments have obtained the sanction of the said Commissioners to any expenditure not provided for in the respective votes aforesaid, accompanied by copies of the representations made to them by the said departments, shall be laid before the House of Commons with the appropriation accounts of navy and army services for the year, in order that such proceedings may be submitted for the sanction of Parliament, and that provision may be made for the deficiencies upon the several votes for the said

services in such manner as Parliament may determine.

The Commissioners of the Treasury shall not authorise any expenditure which may cause an excess upon the aggregate sums appropriated by this Act, for naval services and for army services respectively.

5. Whereas the Commissioners of the Treasury, under the powers vested in them by the Act of the session held in the thirty-first and thirty-second years of the reign of Her present Majesty, chapter eighty-five, have authorised expenditure not provided for in the sums appropriated to naval and military services by the said Act to be temporarily defrayed out of surpluses so far as such surpluses will extend which have arisen by the saving of expenditure upon votes within the same department for the year ended on the thirty-first day of March one thousand eight hundred and sixty-nine, as follows:

1st. One hundred and thirty-four thousand three hundred and fifty-seven pounds ten shillings and threepence for navy services unprovided for in the grants for navy services for the said year, temporarily defrayed to the extent of one hundred and thirty-four thousand three hundred and fifty-seven pounds ten shillings and threepence out of surpluses to the said last-mentioned amount, which have arisen upon certain votes for navy services for the same year:

2d. Three hundred and thirty-four thousand six hundred and forty-seven pounds seven shillings and elevenpence for army services unprovided for in the grants for army services for the said year, temporarily defrayed to the extent of three hundred and one thousand nine hundred pounds three shillings and eightpence out of surpluses to the said last-mentioned amount, which have arisen upon certain votes for army services for the same year, and by the application of the sum of thirty-two thousand seven hundred and forty-seven pounds four shillings and threepence, being the sum which has been realized in excess of the estimated appropriations in aid, the said two sums making together the sum of three hundred and thirty-four thousand six hundred and forty-seven pounds seven shillings and elevenpence:

It is enacted that the application of the said sums to cover the said deficiencies is hereby sanctioned.

#### *Permanent Regulations as to certain Payments.*

6. The following regulations shall be observed with respect to the application of any sum granted by this Act, or by any Act that may hereafter be passed, for the half pay of officers of Her Majesty's forces; that is to say,

- (1.) No person shall receive any half pay who,
  - (a.) Was under the age of sixteen years at the time when the regiment, troop, or company in which he served was reduced; or
  - (b.) Did not do actual service in some regiment, battalion, troop, or company in Her Majesty's service, except in cases in which the commission was received under circumstances which did not, according to the regulations of the Army, require the officer to serve; or
  - (c.) Has resigned his commission, and has had no commission since such resignation:
- (2.) No part of any sum granted for half pay as aforesaid shall be allowed to any person by virtue of any warrant or appointment, except to such person as would have been otherwise entitled thereto as a reduced officer:
- (3.) No person shall receive any part of any sum granted for half pay for any time during which he holds any other military employment of profit under Her Majesty or in Her Majesty's colonies or possessions beyond the seas, except the holders of any staff or garrison appointments or appointments in the militia, yeomanry, volunteer, or other reserve forces of Her Majesty, who may, with Her Majesty's approbation, signified by one of Her Majesty's Principal Secretaries of State, receive the half pay to which they would respectively be entitled if they held no military employment of profit under Her Majesty:
- (4.) No person shall receive any part of any sum granted for half pay for any time during which he holds any civil employment of profit under Her Majesty, or in Her Majesty's colonies or possessions beyond the seas, except as hereafter mentioned, that is to say:
  - (a.) Such persons as hold appointments in Her Majesty's household may receive the full amount of their half pay:
  - (b.) Where the annual emoluments of any civil employment of profit held by any person entitled to half pay do not exceed three times the amount of the highest rate of half pay attached to the rank by virtue of which he claims to receive half pay, such person may, with Her Majesty's pleasure to that effect, signified by the Commissioners of Her Majesty's Treasury through one of the Principal Secretaries of State, receive the half pay to which he would be entitled if he held no such employment of profit:
  - (c.) Where the annual emoluments of any civil employment held by any per-

son entitled to half pay exceed three times the amount of such highest rate of half pay as aforesaid, but fall short of four times such amount, the holder of such employment may, with Her Majesty's pleasure, signified in the manner aforesaid, receive so much half pay as, added to the emoluments of his civil employment, will together make up four times the amount of such half pay:

- (d.) Where the Commissioners of Her Majesty's Treasury are of opinion that the employment of military officers in the colonies or elsewhere in civil situations of responsibility with small emoluments will be conducive to economy, and thereby beneficial to the public service, the said Commissioners may authorise the receipt of half pay by military officers notwithstanding their employment in a civil situation:
- (5.) In every case the officer authorised to receive half pay with the salary or emolument of any military or civil employment shall specify in his declaration by this Act required the other military or civil employment which he may hold:
- (6.) An account shall be laid before Parliament in every year with the army estimates of the number of officers who are allowed to receive half pay with civil employment, specifying the names of such officers, with the respective amounts of their half pay, and their emoluments, and distinguishing in every such account the officers to whom such half pay has been allowed subsequent to the last account.

7. No person shall receive any part of any grant which may be made in pursuance of this Act, or any Act hereafter to be passed, for half pay, or army, navy, or civil non-effective services, until he has subscribed such declaration as may from time to time be prescribed by the Commissioners of the Treasury; provided that whenever payment on account of any of the above-named services is made at more frequent intervals than once in the quarter, it shall be lawful for the Commissioners of the Treasury to dispense with the production of more than one declaration in respect of each quarterly period; and such declaration may be made and subscribed before any of Her Majesty's justices of the peace, notary public, or resident minister in the United Kingdom of Great Britain and Ireland, or the colonies or dominions of Her Majesty; and when such declarations are taken abroad they may be made and subscribed before a British minister, secretary of embassy, secretary of legation, consul, or British chaplain, or before a notary public or some magistrate or other person competent to administer such declarations; and as regards

naval services before the Lord High Admiral or a Lord Commissioner or Secretary of the Admiralty, or a superintendent of a dockyard, victualling, or medical establishment, or before an officer in command of one of Her Majesty's ships, or a chaplain serving on board one of Her Majesty's ships; and such declarations for army, navy, and civil services may also be made and subscribed before any other person now by law authorised to administer or receive such declarations, or before

any of the persons appointed to examine vouchers in the office of the Paymaster General, in the manner, and under the pains, penalties, and forfeitures, specified in an Act passed in the session held in the fifth and sixth years of the reign of His late Majesty, chapter sixty-two, for the abolition of unnecessary oaths.

8. This Act may be cited for all purposes as "The Appropriation Act, 1870."

ABSTRACT of SCHEDULES (A.) and (B.) to which this Act refers.

SCHEDULE (A.)

Grants out of the Consolidated Fund	-	-	-	-	-	-	£	s.	d.
							42,845,684	7	2

SCHEDULE (B.)—APPROPRIATION OF GRANTS.

Part I. Deficiencies, 1868-69 and prior years	-	-	-	-	-	-	£	s.	d.
Part II. Supplementary, 1869-70	-	-	-	-	-	-	237,289	7	2
							326,902	-	-
1870-71:—									
Part III. Navy	-	-	-	-	-	-	9,370,530	-	-
Part IV. Army	-	-	-	-	-	-	12,965,000	-	-
Part V. Civil Services, Class I.	-	-	-	-	-	-	£		
Part VI. Ditto, Class II.	-	-	-	-	-	-	1,457,463		
Part VII. Ditto, Class III.	-	-	-	-	-	-	1,707,742		
Part VIII. Ditto, Class IV.	-	-	-	-	-	-	3,985,380		
Part IX. Ditto, Class V.	-	-	-	-	-	-	1,689,870		
Part X. Ditto, Class VI.	-	-	-	-	-	-	620,593		
Part XI. Ditto, Class VII.	-	-	-	-	-	-	513,767		
							88,982		
TOTAL CIVIL SERVICES	-	-	-	-	-	-	10,063,797	-	-
Part XII. Revenue departments	-	-	-	-	-	-	6,426,720	-	-
Part XIII. Vote of Credit—War in Europe	-	-	-	-	-	-	2,000,000	-	-
Part XIV. Exchequer Bonds	-	-	-	-	-	-	1,300,000	-	-
Part XV. Miscellaneous	-	-	-	-	-	-	155,446	-	-
							42,845,684	7	2

SCHEDULE (A.)

GRANTS OUT OF THE CONSOLIDATED FUND.

For the service of the years ending 31st March 1869 and 1870, and for preceding years;				£	s.	d.	£	s.	d.
Under Act 33 Vict. cap. 5. s. 1.	-	-	-	-	-	-	564,191	7	2
For the service of the year ending 31st March 1871; viz.									
Under above Act, s. 2.	-	-	-	-	9,000,000	0	0		
Under Act 33 Vict. cap. 31.	-	-	-	-	9,000,000	0	0		
Under this Act	-	-	-	-	24,281,493	0	0		
							42,281,493	0	0
TOTAL	-	-	-	-	-	-	£42,845,684	7	2

## SCHEDULE (B).—PART I.

## DEFICIENCIES.

SCHEDULE of SUMS granted to make good deficiencies on the several grants herein particularly mentioned for the year ended on the 31st day of March 1869, and for preceding years; viz. :—

		£	s.	d.
CIVIL SERVICES, viz.,	CLASS I. — British embassy houses, Paris and Madrid	1,324	0	4
	Rates for government Property	3,802	17	3
	Treasury	849	2	7
	Chief Secretary to Lord Lieutenant of Ireland	11	23	3
	Commissioners of Works, England	3,019	14	2
	Lunacy commission, England	15	11	4
	CLASS II. — Printing and stationery	13,794	5	3
	Fishery board	1,949	19	2
	Record office, Ireland	10	3	8
	Boundary survey	111	155	10
	Charitable donations, &c.	614	6	6
	Police, counties and boroughs, Great Britain	29,462	11	11
	Miscellaneous legal charges, England	193	4	0
	County prisons and reformatories, &c., Great Britain	6,040	15	9
	Convict establishments in the colonies	5,745	18	0
	County prisons	2,572	2	1
	CLASS III. — Courts of Law and Justice, Scotland	4,021	6	0
	Courts of Probate and Divorce	690	10	3
	Land Registry Office	96	1	0
	Prisons, Scotland	17	421	6
	Constabulary of Ireland	4,650	12	1
	Dundrum Criminal Lunatic Asylum	699	7	7
	Admiralty Court Registry	117	569	16
	Queen's colleges, Ireland	308	10	5
	Universities, &c. Scotland	100	12	10
	CLASS IV. — University of London	4	5	8
	Public education, Ireland	9,639	10	4
	Queen's University, Ireland	251	0	8
	National Gallery, Ireland	21	3	2
	Treasury chest	5,922	16	6
	CLASS V. — Tonnage bounties and liberated African department	3,216	7	4
	China, Japan, Siam, services in	4,568	10	4
	Ditto, (1864-5, 1865-6, 1866-7, 1867-8)	58,443	11	11
	Pitcairn's Islanders (1866-7)	24	11	8
	CLASS VI. — Superannuations and retired allowances	1,154	8	2
	Hospitals and infirmaries, Ireland	4	14	8
	Nonconforming clergy	6,409	10	11
	Temporary commissions	19,382	11	4
	CLASS VII. — Malta and Alexandria telegraph	19,388	0	9
	Local dues on shipping	3,629	8	5
	Ditto, ditto, (1867-8)	11,767	17	8
	Flax cultivation	178	2	11
	Acceleration of registration	9,516	6	1
TOTAL CIVIL SERVICES		£ 218,003	0	7
Inland Revenue Department		17,728	16	8
Post Office Packet Service		1,557	19	11
Total		227,288	17	2



## SCHEDULE (B.)—PART 2.

## SUPPLEMENTARY.

SCHEDULE of SUPPLEMENTARY SUMS granted to defray the charges for the Services herein particularly mentioned for the year ended on the 31st day of March 1870; viz. :—

		£
CIVIL SERVICES, viz.	CLASS I. - Harbours under the Board of Trade	5,000
	Rates on Government property	5,300
	Privy Council office	3,560
	CLASS II. Lunacy Commission, England	5,000
	Poor Law Commission, England	7,400
	Poor Law Commission, Ireland	2,550
	Law charges, England	3,000
	Common law courts, England	3,500
	Police, counties and boroughs, Great Britain	14,000
	County prisons and reformatories, &c. Great Britain	8,000
	CLASS III. Miscellaneous legal charges, England	3,000
	Courts of law and justice, Scotland	1,600
	Register house, Edinburgh	3,700
	Common law courts, Ireland	1,100
	Constabulary, Ireland	5,547
	CLASS IV. Paris Exhibition	8,342
	Consular services	14,700
	CLASS V. Colonies, grants in aid	4,508
	Tonnage bounties, &c.	25,000
	Treasury chest	6,000
	CLASS VI. Superannuations and retired allowances	18,000
	CLASS VII. Malta and Alexandria telegraph and subsidies to telegraph companies	1,017
	Miscellaneous expenses	24,668
	Acceleration of registration	200
TOTAL CIVIL SERVICES		174,687
Inland Revenue department		22,000
Post Office packet service		130,215
TOTAL		£ 326,902

## SCHEDULE (B.)—PART 3.

## NAVY.

SCHEDULE of SUMS granted to defray the charges of the NAVY SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1871; viz. :—

No.	Sums not exceeding
1. For wages, &c. to 61,000 seamen and marines	£ 2,692,731
2. For victuals and clothing for seamen and marines	968,857
3. For the expense of the Admiralty Office	159,368
4. For the expense of the coast guard service, the royal naval coast volunteers, and royal naval reserve	196,955
5. For the expense of the several scientific departments of the navy	68,794

		Sums not exceeding
No.		£
6.	For the expense of the dockyards and naval yards at home and abroad -	878,352
7.	For the expense of the victualling yards and transport establishments at home and abroad -	69,267
8.	For the expense of the naval medical establishments at home and abroad -	57,730
9.	For the expense of the royal marine divisions -	18,122
10.	For naval stores for the building, repair, and outfitting the fleet and coast guard -	779,090
11.	For steam machinery, and for payments to be made for ships building by contract -	466,173
12.	For new works, buildings, machinery, and repairs in the naval establishments -	744,232
13.	For medicines, medical stores, &c. -	73,150
14.	For martial law and law charges -	16,678
15.	For the expense of various miscellaneous services -	118,791
16.	For half pay, reserved and retired pay to officers of the navy and royal marines -	902,100
17.	For military pensions and allowances -	635,666
18.	For civil pensions and allowances -	287,134
19.	For freight of ships, for the victualling and conveyance of troops, on account of the army department -	237,340
TOTAL NAVY SERVICES -		£ 9,370,530

## SCHEDULE (B.)—PART 4.

## ARMY.

SCHEDULE of SUMS granted to defray the charges of the ARMY SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1871; viz. :—

		Sums not exceeding
No.		£
1.	For the general staff and regimental pay, allowances, and charges of Her Majesty's land forces at home and abroad, exclusive of India -	4,771,900
2.	For divine service -	43,400
3.	For martial law -	45,600
4.	For the hospital establishment, services, and supplies -	247,500
5.	For the militia and inspection of reserve forces -	720,000
6.	For the yeomanry cavalry -	81,900
7.	For the volunteer corps -	412,400
8.	For the army reserve forces, including enrolled pensioners -	68,000
9.	For the control establishment, wages, &c. -	374,900
10.	For provisions, forage, fuel and light, movement of troops, &c. -	1,428,300
11.	For clothing establishments, services, and supplies -	551,300
12.	For the supply, manufacture, and repair of warlike and other stores, for land and sea service, including establishments of manufacturing departments -	820,400
13.	For the superintending establishment of, and the expenditure for, works, buildings, and repairs at home and abroad -	695,400
14.	For military education -	139,300
15.	For miscellaneous services -	50,600
16.	For the administration of the army -	217,300
17.	For rewards for distinguished services -	27,300
18.	For the pay of general officers -	73,000
19.	For the full pay of reduced and retired officers, half pay, and the purchase of full and half-pay commissions -	598,000

No.		Sums not exceeding
		£
20.	For widows pensions and compassionate allowances - - - -	155,300
21.	For pensions and allowances to wounded officers - - - -	20,800
22.	For Chelsea and Kilmainham hospitals, and the in-pensioners thereof - - - -	36,000
23.	For the out-pensioners of Chelsea Hospital, &c. - - - -	1,220,100
24.	For superannuation allowances, &c. - - - -	148,300
25.	For the non-effective services of the militia, yeomanry cavalry, and volunteer corps - - - -	18,000
TOTAL ARMY SERVICES - - - - £		12,965,000

## SCHEDULE (B.)—PART 5.

## CIVIL SERVICES.—CLASS I.

SCHEDULE of Sums granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1871; viz. :—

No.		Sums not exceeding
		£
1.	For the maintenance and repair of the royal palaces - - - -	32,674
2.	For the royal parks and pleasure gardens - - - -	119,450
3.	For the maintenance and repair of public buildings in Great Britain; for providing the necessary supply of water for the same; for rents of houses for the temporary accommodation of public departments, and charges attendant thereon - - - -	123,807
4.	For the supply and repair of furniture in the public departments in Great Britain - - - -	17,200
5.	For purchase of lands for new palace at Westminster - - - -	80,000
6.	For the buildings of the Houses of Parliament - - - -	43,757
7.	For the purchase of land and houses near the Downing Street site for public offices - - - -	18,000
8.	For erecting offices in Downing Street for the Secretaries of State for the Home and Colonial Departments, Poor Law Board, &c. - - - -	40,000
9.	For enlarging the Public Record Repository, and providing the necessary fittings - - - -	36,083
10.	For the repair and restoration of the chapter house at Westminster - - - -	6,395
11.	For one half of the expense of erecting, improving, and maintaining court houses or offices for the sheriff courts in Scotland - - - -	14,817
12.	Towards the purchase of a site for the enlargement of the National Gallery - - - -	44,000
13.	For erecting a building for the University of London - - - -	16,700
14.	For a grant in aid of buildings for the University of Glasgow - - - -	20,000
15.	For the extension of the Industrial Museum, Edinburgh - - - -	10,000
16.	For erecting a new building on the site of the wings and on a portion of the courtyard of Burlington House, for the occupation of various learned bodies - - - -	55,000
17.	For erecting and maintaining certain works and buildings at the Post Office and Inland Revenue - - - -	159,648
18.	For maintenance of British Museum buildings, rent of premises, and supply of furniture - - - -	15,244
19.	For new buildings for county courts, maintenance of courts, supply of furniture, fuel, &c. - - - -	60,762
20.	For new buildings for the Department of Science and Art - - - -	57,500
21.	For the survey of the United Kingdom, revision of the survey of Ireland, maps for Landed Estates Court, Ireland, publication of maps, and for engraving the geological survey - - - -	120,100
22.	For the enlargement of Marlborough House - - - -	7,600
23.	For constructing certain harbours under the Board of Trade - - - -	70,199

No.		Sums not exceeding
24.	For works and expenses at Portland Harbour	£ 3,880
25.	For a contribution towards the establishment and maintenance of a fire brigade in the metropolis	10,000
26.	For contributions in aid of local assessments for the relief of the poor and for other purposes in respect of certain descriptions of government property, and for salaries and expenses connected with the investigation of claims for contributions	35,913
27.	For the Wellington monument	350
28.	For the erection of a Natural History Museum	6,000
29.	For erecting, repairing, and maintaining the several public buildings in the department of the Commissioners of Public Works in Ireland	147,542
30.	For the restoration of the works of the Ulster Canal	5,000
31.	For erecting and maintaining certain lighthouses abroad	15,510
32.	For the maintenance and repairs of embassy houses abroad	2,722
33.	For the British embassy houses, chapel, consular offices, &c. at Constantinople, China, Japan, and Tehran	61,610
TOTAL CIVIL SERVICES, CLASS I.		£ 1,457,463

## SCHEDULE (B.)—PART 6.

## CIVIL SERVICES.—CLASS II.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1871; viz:—

No.		Sums not exceeding
1.	For salaries and expenses in the offices of the House of Lords	£ 45,023
2.	For salaries and expenses in the offices of the House of Commons	43,806
3.	For salaries and expenses of the department of Her Majesty's Treasury	59,193
4.	For salaries and expenses of the office of Her Majesty's Secretary of State for the Home Department and subordinate offices	87,032
5.	For salaries and expenses in the department of Her Majesty's Secretary of State for Foreign Affairs	64,814
6.	For salaries and expenses in the department of Her Majesty's Secretary of State for the Colonies	34,938
7.	For salaries and expenses in the department of Her Majesty's Most Honourable Privy Council and subordinate departments	47,749
8.	For salaries and expenses in the office of the Committee of Privy Council for Trade, and of the subordinate departments	100,114
9.	For the salaries and expenses of the office of the Lord Privy Seal	2,911
10.	For salaries and expenses of the Charity Commission for England and Wales	17,792
11.	For the salaries and expenses of the Civil Service Commission	12,612
12.	For the salaries and expenses of the Copyhold, Inclosure, and Tithe Commission	20,008
13.	For the imprest expenses under the Inclosure and Drainage Acts	10,250
14.	For salaries and expenses in the department of the Comptroller and Auditor General	37,349

No.	Sums not exceeding
15. For salaries and expenses in the department of the Registrar General of Births, &c. in London	£ 43,720
16. For the salaries and expenses of the office of the Commissioners in Lunacy in England	15,390
17. For the salaries and expenses of the Mint, including expenses of the coinage	40,550
18. For salaries and expenses in the National Debt Office	16,262
19. For salaries and expenses connected with the Patent Law Amendment Act	34,265
20. For salaries and expenses in the department of Her Majesty's Paymaster General in London and Dublin	21,432
21. For expenses connected with the administration of the laws relating to the poor in England	220,109
22. For salaries and expenses of the Public Record Office in England	22,487
23. For salaries and expenses of the establishments under the Public Works Loan Commissioners, and the West India Islands Relief Commissioners	4,563
24. For salaries and expenses in the offices of the Registrars of Friendly Societies in England, Scotland, and Ireland	2,344
25. For stationery, printing, binding, and printed books for the several public departments, and for stationery, printing, binding, and paper, for the two Houses of Parliament, including the salaries and expenses of the Stationery Office	375,656
26. For salaries and expenses of the office of Woods, Forests, and Land Revenues, and of the office of Land Revenue Records and Inrolments	27,024
27. For salaries and expenses of the office of the Commissioners of Her Majesty's Works and Public Buildings	34,028
28. For Her Majesty's foreign and other secret services	25,000
29. For salaries and expenses of the department of the Queen's and Lord Treasurer's Remembrancer in the Exchequer, Scotland, of certain offices in Scotland, and other charges formerly paid from the hereditary revenue	5,354
30. For salaries and expenses of the Board of Fisheries in Scotland	13,312
31. For salaries and expenses in the department of the Registrar General of Births, &c., Scotland	7,617
32. For salaries and expenses of the Lunacy Board in Scotland	6,046
33. For salaries and expenses connected with the administration of the Poor Law in Scotland	17,703
34. For salaries of the officers and attendants of the household of the Lord Lieutenant of Ireland and other expenses	6,231
35. For salaries and expenses of the offices of the Chief Secretary to the Lord Lieutenant of Ireland in Dublin and London, and subordinate departments	26,496
36. For charges connected with the boundary survey, Ireland	404
37. For salaries and expenses of the office of the Commissioners of Charitable Donations and Bequests for Ireland	2,293
38. For salaries and expenses of the department of the Registrar General of Births, &c., and for expenses of collecting agricultural and emigration statistics in Ireland	19,880
39. For the administration of the laws relating to the poor in Ireland	99,022
40. For salaries and expenses of the Public Record Office, and of the keeper of the State Papers in Ireland	4,492
41. For salaries and expenses of the office of Public Works in Ireland	26,480
TOTAL CIVIL SERVICES, CLASS II.	£ 1,707,742

## SCHEDULE (B).—PART 7.

## CIVIL SERVICES.—CLASS III.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1871; viz.:—

No.		Sums not exceeding £
1.	For law charges, and for salaries, allowances, and incidental expenses, including prosecutions relating to coin, in the department of the solicitor for the affairs of Her Majesty's Treasury - - - - -	44,615
2.	For prosecutions at assizes and quarter sessions in England, formerly paid out of county rates, including adjudications under the Criminal Justice and the Juvenile Offenders Acts, sheriffs expenses, salaries to clerks of assize and other officers, and for compensation to clerks of the peace under the Criminal Justice Acts, and other expenses of the same class - - - - -	200,633
3.	For such salaries and expenses of the Court of Chancery in England as are not charged upon the Consolidated Fund - - - - -	173,831
4.	For such salaries and expenses of the Superior Courts of Common Law in England as are not charged upon the Consolidated Fund - - - - -	62,315
5.	For such salaries and expenses of the Court of Bankruptcy in England as are not charged upon the Consolidated Fund - - - - -	79,377
6.	For salaries and expenses of the county courts - - - - -	420,632
7.	For salaries and expenses of the courts of Probate and Divorce and Matrimonial Causes in England - - - - -	91,520
8.	For salaries and expenses in the offices of the Registrar and Marshal of the High Court of Admiralty in England - - - - -	13,200
9.	For salaries and contingent expenses of the Office of Land Registry - - - - -	5,570
10.	For salaries and expenses of the police courts of London and Sheerness - - - - -	24,899
11.	For the salaries and expenses of the metropolitan police and the superannuations of the late horse and foot patrol - - - - -	217,803
12.	For police in counties and boroughs in England and Wales, and for police in Scotland - - - - -	305,000
13.	For the superintendence of convict establishments and for the maintenance of convicts in England and the Colonies - - - - -	475,627
14.	For maintenance of prisoners in county and borough prisons, of juvenile offenders in reformatories and industrial schools, and of criminal lunatics in private asylums in Great Britain - - - - -	303,880
15.	For maintenance of criminal lunatics in Broadmoor Criminal Lunatic Asylum, England - - - - -	38,943
16.	For miscellaneous legal charges in England - - - - -	18,790
17.	For salaries and incidental expenses connected with criminal proceedings in Scotland - - - - -	72,533
18.	For salaries and expenses of the officers of the Courts of Law and Justice in Scotland - - - - -	56,630
19.	For salaries and expenses of the offices in Her Majesty's General Register House, Edinburgh - - - - -	27,501
20.	For management of prisons in Scotland, for maintenance of prisoners in prisons at Perth and Ayr, and for the department for the collection of judicial statistics - - - - -	25,075
21.	For the expense of criminal prosecutions and other law charges in Ireland - - - - -	77,903
22.	For such salaries and expenses of the Court of Chancery in Ireland as are not charged on the Consolidated Fund - - - - -	45,294
23.	For such salaries and expenses of the Superior Courts of Common Law in Ireland as are not charged on the Consolidated Fund - - - - -	28,977
24.	For salaries and the incidental expenses of the Court of Bankruptcy and Insolvency in Ireland - - - - -	8,540
25.	For salaries and expenses of the Landed Estates Court in Ireland - - - - -	12,997

No.		Sums not exceeding
		£
26.	For salaries and expenses of the Court of Probate and of the District Registries in Ireland - - -	11,421
27.	For salaries and expenses of the Admiralty Court Registry in Ireland - - -	2,090
28.	For salaries and expenses of the Office for the Registration of Deeds in Ireland - - -	15,180
29.	For salaries and expenses in the Office for the Registration of Judgments in Ireland - - -	3,066
30.	For salaries of the Commissioners of Police, and for the expense of the police courts and of the metropolitan police, Dublin - - -	99,400
31.	For the constabulary force, Ireland - - -	913,007
32.	For the superintendence and inspection of Government prisons, for the Office of Registrar of habitual criminals, and for the maintenance of convicts in government prisons in Ireland - - -	48,960
33.	For maintenance of prisoners in county and borough prisons, and the expenses of reformatories and industrial schools in Ireland - - -	43,211
34.	For maintenance of criminal lunatics in Dundrum Criminal Lunatic Asylum, Ireland - - -	5,610
35.	For salaries and expenses of the Four Courts Marshalsea, Dublin - - -	2,530
36.	For certain miscellaneous legal expenses in Ireland - - -	8,820
TOTAL CIVIL SERVICES, CLASS III. - £		3,985,380

## SCHEDULE (B.)—PART 8.

## CIVIL SERVICES.—CLASS IV.

SCHEDULE of Sums granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1871; viz. :—

No.		Sums not exceeding
		£
1.	For public education in Great Britain - - -	914,721
2.	For the salaries and expenses of the Department of Science and Art, and of the establishments connected therewith - - -	218,336
3.	For salaries and expenses of the British Museum - - -	90,765
4.	For salaries and expenses of the National Gallery, including the purchase of pictures - - -	16,181
5.	For the formation of the National Portrait Gallery - - -	1,800
6.	For grants in aid of the expenditure of certain learned societies in Great Britain - - -	12,450
7.	For the University of London - - -	9,577
8.	For the salaries and incidental expenses of the Endowed Schools Commission - - -	12,220
9.	For grants to Scottish Universities - - -	18,644
10.	For the annuity to the Board of Manufactures in Scotland, in discharge of equivalents under the Treaty of Union, and for the Exhibition of the Torrie collection, and for other purposes - - -	2,100
11.	For public education under the Commissioners of National Education in Ireland - - -	381,172
12.	For the expenses of the Office of the Commissioners of Education in Ireland - - -	725
13.	For salaries and expenses of the National Gallery of Ireland, and for the purchase of pictures - - -	1,990
14.	For the Royal Irish Academy - - -	1,684
15.	For the Queen's University in Ireland - - -	3,240
16.	For the Queen's Colleges in Ireland - - -	4,265
TOTAL CIVIL SERVICES, CLASS IV. - £		1,689,870

## SCHEDULE (B.)—PART 9.

## CIVIL SERVICES.—CLASS V.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1871; viz. :—

No.	Sums not exceeding
1. For the expenses of Her Majesty's embassies and missions abroad - - -	£ 220,919
2. For the consular establishments abroad, and for other expenses chargeable on the consular vote - - -	275,520
3. For the salaries and allowances of governors, &c., and for other expenses in certain colonies - - -	54,116
4. For the charge of the Orange River Territory (Cape of Good Hope) and the island of St. Helena - - -	4,219
5. For salaries and expenses of the mixed commissions established under the treaties with foreign powers for suppressing the traffic in slaves - - -	4,280
6. For tonnage bounties and bounties on slaves, and for expenses of the Liberated African department - - -	29,785
7. For the Emigration Board and Emigration Officers at the different ports of this kingdom, and for certain other expenses connected with emigration - - -	12,545
8. For expenses connected with the emigration of Coolies from India to French colonies - - -	950
9. On account of the Treasury chest - - -	18,259
<b>TOTAL CIVIL SERVICES, CLASS V. - £</b>	<b>620,593</b>

## SCHEDULE (B.)—PART 10.

## CIVIL SERVICES.—CLASS VI.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1871; viz. :—

No.	Sums not exceeding
1. For superannuation and retired allowances to persons formerly employed in the public service - - -	£ 399,134
2. For pensions to masters and seamen of the merchant service, and to their widows and children, under the Merchant Seamen's Fund Act, and for compensation to the late officers of the trustees of the Merchant Seamen's Fund - - -	46,550
3. For the relief of distressed British seamen abroad - - -	86,000
4. For the support of certain hospitals and infirmaries, Ireland - - -	10,046
5. For miscellaneous, charitable, and other allowances in Great Britain - - -	6,714
6. For certain miscellaneous, charitable, and other allowances in Ireland - - -	6,384
<b>TOTAL CIVIL SERVICES, CLASS VI. - £</b>	<b>512,767</b>



## SCHEDULE (B).—PART 11.

## CIVIL SERVICES.—CLASS VII.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES, herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1871; viz.:

	Sums not exceeding
No. 1. For salaries and expenses of temporary commissions (borders, attendances, &c.)	£ 34,590
No. 2. For payments on account of the difference of dues payable by British and foreign vessels under treaties of reciprocity	46,147
No. 3. For the expense of the telegraphic cable laid between Malta and Alexandria, and of the Barmoral telegraph	780
No. 4. For encouraging the cultivation of flax in Ireland	2,000
No. 5. For certain miscellaneous expenses	5,465
<b>TOTAL CIVIL SERVICES, CLASS VII.</b>	<b>£ 88,982</b>

## SCHEDULE (B).—PART 12.

## REVENUE DEPARTMENTS.

SCHEDULE of SUMS granted to defray the charges of the several REVENUE DEPARTMENTS herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1871; viz.:

	Sums not exceeding
No. 1. For the salaries and expenses of the Customs Department	£ 989,837
No. 2. For the salaries and expenses of the Inland Revenue Department	1,592,751
No. 3. For salaries and expenses of the Post Office services, the expenses of Post Office savings banks, and of government annuities and insurances, and of the collection of the Post Office revenue	2,376,979
No. 4. For the Post Office packet service (a.)	1,107,153
No. 5. For the salaries and expenses of the Post Office telegraph service	360,000
<b>TOTAL REVENUE DEPARTMENTS.</b>	<b>£ 6,426,720</b>

(a.) No part of this sum is to be applicable or applied in or towards making any payment in respect of any period subsequent to the 20th day of June 1863 to Mr. Joseph George Churchward, or to any person claiming through or under him, by virtue of a certain contract, bearing date the 26th day of April 1869, made between the Lords Commissioners of Her Majesty's Admiralty (for and on behalf of Her Majesty) of the first part, and the said Joseph George Churchward of the second part, or in or towards the satisfaction of any claim whatsoever of the said Joseph George Churchward by virtue of that contract, so far as relates to any period subsequent to the 20th day of June 1863.

## SCHEDULE (B.)—PART 13.

## VOTE OF CREDIT—WAR IN EUROPE.

Towards defraying the expenses beyond the ordinary grants of Parliament which may be incurred in maintaining the Naval and Military services of this Kingdom, including the cost of a further number of land forces of 20,000 men during the War in Europe	£ - 2,000,000
--	------------------

## SCHEDULE (B.)—PART 14.

## EXCHEQUER BONDS.

To pay off and discharge Exchequer Bonds which will become due and payable during the year ending on 31st March 1871	£1,300,000
--	------------

## SCHEDULE (B.)—PART 15.

## MISCELLANEOUS.

Advances during the year ending 31st March 1871 for the purchase of a site, erection of building, and other expenses for the New Courts of Justice and Offices belonging thereto	£21,450
Advances during the year ending 31st March 1871 for defraying the expenses of Greenwich Hospital and School	133,996
	<u>£155,446</u>

## CHAP. 97.

*The Stamp Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title and commencement of Act.*
2. *Interpretation of terms.*
3. *Grant of duties in schedule.*
4. *As to instruments charged with the duty of 35s.*
5. *As to instruments relating to property belonging to the Crown.*
6. *All duties to be paid according to the regulations of this Act, and the schedule to be read as part of this Act.*

## GENERAL REGULATIONS.

7. *How instruments are to be written and stamped.*
8. *Instruments to be separately charged with duty in certain cases.*
9. *As to the use of appropriated stamps.*
10. *Facts and circumstances affecting duty to be set forth in instruments. Penalty 10l.*
1. *Money in foreign or colonial currency to be valued.*
2. *Stock and marketable securities to be valued.*
3. *Effect of statement of value.*
14. *As to denoting stamp.*
15. *Terms upon which instruments may be stamped after execution. Proviso. As to instruments executed abroad. As to the remission of penalties.*

16. *Terms upon which unstamped or insufficiently stamped instruments may be received in evidence in any court. The officer of the court to account for duties and penalties.*
17. *Instrument not duly stamped inadmissible.*
18. *The Commissioners may be required to express their opinion as to duty. Mode and effect of proceeding. Proviso.*
19. *Person dissatisfied may appeal. Mode of proceeding.*
20. *The Commissioners may call for and refuse to proceed without evidence. Proviso.*
21. *Rolls, books, &c. to be open to inspection. Penalty for refusal, 10l.*
22. *Penalty for enrolling, &c. any instrument not duly stamped, 10l.*
23. *How duties to be denoted.*
24. *General direction as to the cancellation of adhesive stamps. Penalty for neglect or refusal, 10l.*
25. *Penalty for frauds in relation to adhesive stamps, or to any duty, 50l.*
26. *Recovery of penalties.*
27. *Affidavits and declarations how to be made.*
28. *Moneys received and not appropriated to be recoverable in Court of Exchequer.*

#### SPECIAL REGULATIONS.

##### *As to Admissions generally.*

29. *Duty, how to be denoted.*
30. *Penalty on officers for neglect or refusal to prepare or make duly stamped documents or entries, 10l.*  
*As to Admissions to the Degree of a Barrister-at-Law in Ireland, and of Students to the Society of King's Inns, Dublin.*
31. *Distinct accounts to be kept of certain sums payable to King's Inns, Dublin.*
32. *As to admission as a student of King's Inns, Dublin, of a member of Inns of Court in England.*

##### *As to Admissions or Appointments to and Grants of Offices or Employments.*

33. *Fees and emoluments how to be estimated.*
34. *Re-appointments not chargeable with duty, except for augmentation.*
35. *No duty on promotion in the Customs except for augmentation.*

##### *As to Agreements.*

36. *Duty may be denoted by adhesive stamp.*

##### *As to Appointments, &c. to Ecclesiastical Benefices, &c.*

37. *Net yearly value, how to be ascertained and determined.*

##### *As to Appraisements.*

38. *Appraisements to be written out. Penalty on the appraiser, 50l. On other offenders, 20l.*

##### *As to Instruments of Apprenticeship.*

39. *Interpretation of term.*
40. *Premium or consideration to be set out in writing. Penalty, 20l., and the contract to be void.*

##### *As to original Articles of Clerkship.*

41. *Articles in England not to be charged with more than one duty of 80l. And in certain cases may be stamped with additional duty.*
42. *Articles in Scotland not to be charged with more than one duty of 60l. And in certain cases may be stamped with additional duty.*
43. *Terms upon which articles may be stamped after execution.*
44. *Distinct account to be kept of 14l. payable to King's Inns, Dublin.*

##### *As to Bank Notes, Bills of Exchange, and Promissory Notes.*

45. *Interpretation of terms.*
46. *Bank notes may be re-issued.*
47. *Penalty for issuing an unstamped bank note, 50l. ; for receiving, 20l.*
48. *Interpretation of term "bill of exchange."*
49. *Interpretation of term "promissory note."*
50. *The fixed duty may be denoted by adhesive stamp.*

51. *Ad valorem* duties to be denoted in certain cases by adhesive stamps. *Provisoes for the protection of bona fide holders; not to relieve any other person.*  
 52. Bills and notes purporting to be drawn, &c. abroad to be deemed to have been so drawn, &c.  
 53. Terms upon which bills and notes may be stamped after execution.  
 54. Penalty for issuing, &c. any unstamped bill or note, 10l.; and the bill or note to be unavailable. *Proviso as to the fixed duty; not to relieve from penalty.*  
 55. One bill only out of a set need be stamped.

*As to Bills of Lading.*

56. Bills of lading.

*As to Bills of Sale.*

57. Bills of sale.

*As to Bonds given in relation to the Duties of Customs and Excise.*

58. Bonds not to include goods, &c. belonging to more than one person. Penalty 50l.

*As to the Certificates of Attorneys and others.*

59. Penalty for practising without a certificate, or not making true statement, on application for certificate, 50l., and incapacity to recover fees, &c.  
 60. Penalty on unqualified persons preparing instruments, 50l. *Proviso.*  
 61. One certificate only in England, Scotland, or Ireland.  
 62. Certificates of attorneys and others in England and Ireland to be taken out and stamped according to the provisions of Acts relating thereto.  
 63. Other certificates how to be taken out and stamped.  
 64. Certain certificates to be dated and to expire as in this section mentioned.

*As to the Certificate of Registration of a Design.*

65. Duty to be denoted by an appropriated stamp.

*As to Charter-parties.*

66. Duty may be denoted by an adhesive stamp.  
 67. As to charter-parties executed abroad.  
 68. Terms upon which charter-parties may be stamped after execution.

*As to Contract Notes.*

69. Duty may be denoted by adhesive stamp. Penalty for making an unstamped note, 20l.; and no brokerage, &c. recoverable.

*As to Conveyances on Sale.*

70. Interpretation of term.  
 71. How *ad valorem* duty to be calculated in respect of stock and securities.  
 72. How consideration consisting of periodical payments to be charged.  
 73. How conveyance in consideration of a debt, or subject to future payment, &c., to be charged.  
 74. Direction as to duty in certain cases.  
 75. As to the sale of an annuity or right not before in existence.  
 76. Where several instruments, the principal instrument only to be charged with *ad valorem* duty.  
 77. Principal instrument, how to be ascertained.

*As to Conveyances on any occasion except Sale or Mortgage.*

78. What is to be deemed a conveyance on any occasion, not being a sale or mortgage.

*As to attested Copies and Extracts.*

79. Certain copies and extracts may be stamped without penalty within 14 days after attestation.

*As to certified Copies and Extracts from Registers of Births, &c.*

80. By whom duty to be paid; may be denoted by adhesive stamp.

*As to Copyhold and Customary Estates.*

81. Payment of duty to be certified.  
 82. Not to be charged more than once.

83. *Facts and circumstances affecting duty, how to be stated. Penalty 50l.*  
 84. *Steward to refuse to perform certain acts. Penalty for not refusing, 50l.*  
 85. *Steward to make out duly stamped copies. Penalty for neglect, 50l.; and to be liable for the duty.*  
 86. *Steward may refuse to proceed except on payment of his fees and duty.*

*As to Delivery Orders and Warrants for Goods.*

87. *Interpretation of term.*  
 88. *Interpretation of term.*  
 89. *Duty may be denoted by an adhesive stamp.*  
 90. *By whom duty on delivery order to be paid.*  
 91. *What documents to be chargeable as delivery orders. Penalty for making false statement, or signing, &c., or making use of any order not duly stamped, or containing any false statement, 20l.*  
 92. *Penalty for making, &c. unstamped warrant, 20l.*

*As to Duplicates and Counterparts.*

93. *When duly stamped.*

*As to Exchange or Excambion and Partition or Division.*

94. *As to exchange or excambion, &c.*

*As to Grants of Honours and Dignities.*

95. *How to be charged in certain cases.*

*As to Leases, &c.*

96. *Agreements for not more than thirty-five years to be charged as leases.*  
 97. *Leases, how to be charged in respect of produce, &c. Effect of statement of value.*  
 98. *Directions as to duty in certain cases.*  
 99. *Duty in certain cases may be denoted by adhesive stamp.*  
 100. *Penalty in certain cases. Proviso.*

*As to Letters of Allotment, Scrip Certificates, and Scrip.*

101. *Penalty for executing, &c. not duly stamped, 20l.*

*As to Letters or Powers of Attorney and Voting Papers.*

102. *Proxies and voting papers confined to one meeting. Duty may be denoted by adhesive stamp. Penalty for executing, &c. not duly stamped, 50l., and vote void, may not be stamped after execution.*  
 103. *Power relating to Government stocks, how to be charged.*  
 104. *Order to pay dividends not power of attorney.*

*As to Mortgages, &c.*

105. *Interpretation of term.*  
 106. *Security for stock, how to be charged.*  
 107. *Security for future advances, how to be charged. Proviso.*  
 108. *Security for repayment by periodical payments, how to be charged.*  
 109. *As to transfers and further charges.*  
 110. *As to copyholds.*  
 111. *As to mortgage with conveyance of equity of redemption.*  
 112. *Exemption from stamp duty in favour of benefit building societies restricted.*  
 113. *Interpretation of term "Foreign security."*  
 114. *Penalty for issuing, &c. any foreign security not duly stamped, 20l.*  
 115. *Foreign securities may be stamped without penalty.*

*As to Notarial Acts.*

116. *Duty may be denoted by adhesive stamp.*

*As to Policies of Insurance.*

117. *Interpretation of terms, &c.*  
 118. *Penalty for not making out policy, or making, &c. any policy not duly stamped, 20l.*  
 119. *Duty may be denoted by adhesive stamp. Penalty, 20l.*

*As to Receipts.*

120. *Interpretation of term.*  
 121. *Duty may be denoted by adhesive stamp.*  
 122. *Terms upon which receipts may be stamped after execution.*  
 123. *Penalty for offences.*

*As to Settlements.*

124. *As to settlement of policy or security. Proviso as to policies.*  
 125. *Settlements when not to be charged as securities.*  
 126. *Where several instruments one only to be charged with ad valorem duty.*

*As to Share Warrants.*

127. *Penalty for issuing share warrant not duly stamped, 50l.*

*As to transfers of Shares in Cost Book Mines.*

128. *Duty may be denoted by adhesive stamp. Penalty for signing, &c. 20l. Schedule.*

An Act for granting certain Stamp Duties in lieu of Duties of the same kind now payable under various Acts, and consolidating and amending provisions relating thereto.

(10th August 1870.)

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted:

And be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as "The Stamp Act, 1870," and shall come into operation on the first day of January one thousand eight hundred and seventy-one, which date is herein-after referred to as the commencement of this Act.

2. In the construction and for the purposes of this Act the following words have the meanings by this section assigned to them, unless it is otherwise provided, or there be something in the context repugnant thereto:

- (1.) "The Commissioners" means the Commissioners of Inland Revenue:
- (2.) "Material" means and includes every sort of material upon which words or figures can be expressed:

- (3.) "Write," "written," and "writing," include every mode in which words or figures can be expressed upon material:
- (4.) "Instrument" means and includes every written document:
- (5.) "Stamp" means as well a stamp impressed by means of a die as an adhesive stamp:
- (6.) "Stamped," with reference to instruments and material, applies as well to instruments and material impressed with stamps by means of a die as to instruments and material having adhesive stamps affixed thereto:
- (7.) "Executed" and "execution," with reference to instruments not under seal, mean signed and signature:
- (8.) "Money" includes all sums expressed in British or in any foreign or colonial currency:
- (9.) "Stock" means and includes any share in any stocks or funds transferable at the Bank of England or at the Bank of Ireland, and India promissory notes, and any share in the stocks or funds of any foreign or colonial state or government, or in the capital stock or funded debt of any company, corporation, or society in the United Kingdom, or of any foreign or colonial company, corporation, or society:
- (10.) "Marketable security" means a security of such a description as to be capable of being sold in any stock market in the United Kingdom:
- (11.) "Person" includes company, corporation, and society:
- (12.) "Steward" of a manor includes deputy steward.

3. From and after the commencement of this Act, and subject to the exemptions contained in the schedule to this Act, and in any other Acts

for the time being in force, there shall be charged for the use of Her Majesty, her heirs and successors, upon the several instruments specified in the schedule to this Act, the several duties in the said schedule specified, and no other duties.

4. Any instrument which by any Act heretofore passed, and not relating to stamp duties, is specifically charged with the duty of thirty-five shillings, shall, from and after the commencement of this Act, be chargeable only with the duty of ten shillings in lieu of the said duty of thirty-five shillings.

5. Except where express provision to the contrary is made by this or any other Act, an instrument relating to property belonging to the Crown, or being the private property of the Sovereign, is to be charged with the same duty as an instrument of the same kind relating to property belonging to a subject.

6. (1.) All stamp duties which may from time to time be chargeable by law upon any instruments are to be paid and denoted according to the general and special regulations in this Act contained.

(2.) The said schedule, and everything therein contained, is to be read and construed as part of this Act.

#### GENERAL REGULATIONS.

7. (1.) Every instrument written upon stamped material is to be written in such manner, and every instrument partly or wholly written before being stamped is to be so stamped, that the stamp may appear on the face of the instrument, and cannot be used for or applied to any other instrument written upon the same piece of material.

(2.) If more than one instrument be written upon the same piece of material, every one of such instruments is to be separately and distinctly stamped with the duty with which it is chargeable.

8. Except where express provision to the contrary is made by this or any other Act,

(1.) An instrument containing or relating to several distinct matters is to be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of such matters.

(2.) An instrument made for any consideration or considerations in respect whereof it is chargeable with *ad valorem* duty, and also for any further or other valuable consideration or considerations, is to be charged with duty in respect of such last-mentioned consideration or considera-

tions as if it were a separate instrument made for such consideration or considerations only.

9. (1.) A stamp which by any word or words on the face of it is appropriated to any particular description of instrument is not to be used, or, if used, is not to be available, for an instrument of any other description.

(2.) An instrument falling under the particular description to which any stamp is so appropriated as aforesaid is not to be deemed duly stamped, unless it is stamped with the stamp so appropriated.

10. All the facts and circumstances affecting the liability of any instrument to *ad valorem* duty, or the amount of the *ad valorem* duty with which any instrument is chargeable, are to be fully and truly set forth in the instrument; and every person who, with intent to defraud Her Majesty, or her heirs or successors,

(1.) Executes any instrument in which all the said facts and circumstances are not fully and truly set forth;

(2.) Being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all the said facts and circumstances;

shall forfeit the sum of ten pounds.

11. Where an instrument is chargeable with *ad valorem* duty in respect of any money in any foreign or colonial currency, such duty shall be calculated on the value of such money in British currency according to the current rate of exchange on the day of the date of the instrument.

12. Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable security, such duty shall be calculated on the value of such stock or security according to the average price thereof on the day of the date of the instrument.

13. Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it is, so far as regards the subject matter of such statement, to be deemed duly stamped, unless or until it is shown that such statement is untrue, and that the instrument is in fact insufficiently stamped.

14. Where the duty with which an instrument is chargeable depends in any manner upon the duty paid upon another instrument, the payment of such last-mentioned duty shall, if application be made to the Commissioners for that purpose, and on production of both the instruments, be denoted in such manner as the Commissioners think fit upon such first-mentioned instrument.

15. (1.) Except where express provision to the contrary is made by this or any other Act, any unstamped or insufficiently stamped instrument may be stamped after the execution thereof, on payment of the unpaid duty and a penalty of ten pounds, and also by way of further penalty, where the unpaid duty exceeds ten pounds, of interest on such duty, at the rate of five pounds per centum per annum, from the day upon which the instrument was first executed up to the time when such interest is equal in amount to the unpaid duty.

And the payment of any penalty or penalties is to be denoted on the instrument by a particular stamp.

(2.) Provided as follows :

(a.) Any unstamped or insufficiently stamped instrument, which has been first executed at any place out of the United Kingdom, may be stamped, at any time within two months after it has been first received in the United Kingdom, on payment of the unpaid duty only :

(b.) The Commissioners may, if they think fit, at any time within twelve months after the first execution of any instrument, remit the penalty or penalties, or any part thereof.

16. (1.) Upon the production of an instrument chargeable with any duty as evidence in any court of civil judicature in any part of the United Kingdom, the officer whose duty it is to read the instrument shall call the attention of the judge to any omission or insufficiency of the stamp thereon, and if the instrument is one which may legally be stamped after the execution thereof, it may, on payment to the officer of the amount of the unpaid duty, and the penalty payable by law on stamping the same as aforesaid, and of a further sum of one pound, be received in evidence, saving all just exceptions on other grounds.

(2.) The officer receiving the said duty and penalty shall give a receipt for the same, and make an entry in a book kept for that purpose of the payment and of the amount thereof, and shall communicate to the Commissioners the name or title of the cause or proceeding in which, and of the party from whom, he received the said duty and penalty, and the date and description of the instrument, and shall pay over to the Receiver General of Inland Revenue, or to such other person as the Commissioners may appoint, the money received by him for the said duty and penalty.

(3.) Upon production to the Commissioners of any instrument in respect of which any duty or penalty has been paid as aforesaid, together with the receipt of the said officer, the payment of

such duty and penalty shall be denoted on such instrument accordingly.

17. Save and except as aforesaid, no instrument executed in any part of the United Kingdom, or relating, wheresoever executed, to any property situate, or to any matter or thing done or to be done, in any part of the United Kingdom, shall, except in criminal proceedings, be pleaded or given in evidence, or admitted to be good, useful, or available in law or equity, unless it is duly stamped in accordance with the law in force at the time when it was first executed.

18. (1.) Subject to such regulations as the Commissioners may think fit to make, the Commissioners may be required by any person to express their opinion with reference to any executed instrument upon the following questions :

- (a.) Whether it is chargeable with any duty :
- (b.) With what amount of duty it is chargeable.

(2.) If the Commissioners are of opinion that the instrument is not chargeable with any duty, such instrument may be stamped with a particular stamp denoting that it is not chargeable with any duty.

(3.) If the Commissioners are of opinion that the instrument is chargeable with duty, they shall assess the duty with which it is in their opinion chargeable, and if or when the instrument is duly stamped in accordance with the assessment of the Commissioners, it may be also stamped with a particular stamp denoting that it is duly stamped.

(4.) Every instrument stamped with the particular stamp denoting either that it is not chargeable with any duty, or is duly stamped, shall be admissible in evidence, and available for all purposes notwithstanding any objection relating to duty.

(5.) Provided as follows :

(a.) An instrument upon which the duty has been assessed by the Commissioners shall not, if it is unstamped or insufficiently stamped, be stamped otherwise than in accordance with the assessment of the Commissioners :

(b.) Nothing in this section contained extends to any instrument chargeable with duty, and made as a security for money or stock without limit :

(c.) Nothing in this section contained shall be deemed to authorise the stamping after the execution thereof of any instrument prohibited by law from being so stamped.

19. (1.) Any person who is dissatisfied with the assessment of the Commissioners made in pursuance of the last preceding section may, within twenty-one days after the date of such



assessment, and on payment of duty in conformity therewith, appeal against such assessment to Her Majesty's Court of Exchequer in England, Scotland, or Ireland, according to the country in which the case has arisen, and may for that purpose require the Commissioners to state and sign a case, setting forth the question upon which their opinion was required, and the assessment made by them.

(2.) The Commissioners shall thereupon state and sign a case accordingly, and deliver the same to the person by whom it is required, and on his application such case may be set down for hearing in the proper court.

(3.) Upon the hearing of such case (due notice of which is to be given to the Commissioners) the court shall determine the question submitted, and, if the instrument in question is in the opinion of the court chargeable with any duty, shall assess the duty with which it is so chargeable.

(4.) If it is decided by the court that the assessment of the Commissioners is erroneous, any excess of duty which may have been paid in conformity with such erroneous assessment, together with any penalty which may have been paid in consequence thereof, shall be ordered by the court to be repaid by the Commissioners to the appellant, together with the costs incurred by him in relation to the appeal.

(5.) But if the assessment of the Commissioners is confirmed by the court, the costs incurred by the Commissioners in relation to the appeal shall be ordered by the court to be paid by the appellant to the Commissioners.

20. (1.) In any case of application to the Commissioners with reference to any instrument the Commissioners may require to be furnished with an abstract of the instrument, and also with such evidence as they may deem necessary, in order to show to their satisfaction whether all the facts and circumstances affecting the liability of the instrument to duty, or the amount of the duty chargeable thereon, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence has been furnished accordingly.

(2.) Provided that no affidavit or statutory declaration made in pursuance of this section shall be used against any person making the same in any proceeding whatever, except in an inquiry as to the duty with which the instrument to which it relates is chargeable; and every person by whom any such affidavit or declaration is made shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty, forfeiture, or disability he may have incurred by reason of the omission to state truly in such

instrument any of the facts or circumstances aforesaid.

21. (1.) All public officers having in their custody any rolls, books, records, papers, documents, or proceedings, the inspection whereof may tend to secure any duty, or to the proof or discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person thereunto authorised by the Commissioners to inspect all such rolls, books, records, papers, documents, and proceedings, and to take such notes and extracts as he may deem necessary, without fee or reward.

(2.) Every person who refuses to permit such inspection shall for every such refusal forfeit the sum of ten pounds.

22. If any person whose office it is to enrol, register, or enter in or upon any rolls, books, or records any instrument chargeable with any duty, enrolls, registers, or enters any such instrument not being duly stamped, he shall forfeit the sum of ten pounds.

23. Except where express provision is made to the contrary, all duties are to be denoted by impressed stamps only.

24. (1.) An instrument, the duty upon which is required, or permitted by law, to be denoted by an adhesive stamp, is not to be deemed duly stamped with an adhesive stamp unless the person required by law to cancel such adhesive stamp cancels the same by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, so that the stamp may be effectually cancelled, and rendered incapable of being used for any other instrument, or unless it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time.

(2.) Every person who, being required by law to cancel an adhesive stamp, wilfully neglects or refuses duly and effectually to do so in manner aforesaid, shall forfeit the sum of ten pounds.

25. Any person who—

(1.) Fraudulently removes or causes to be removed from any instrument any adhesive stamp, or affixes any adhesive stamp which has been so removed to any other instrument with intent that such stamp may be used again;

(2.) Sells or offers for sale, or utters, any adhesive stamp which has been so removed, or utters any instrument having thereon any adhesive stamp which has to his knowledge been so removed as aforesaid;

- (3.) Practices or is concerned in any fraudulent act, contrivance, or device not specially provided for, with intent to defraud Her Majesty, her heirs or successors, of any duty,

shall forfeit, over and above any other penalty to which he may be liable, the sum of fifty pounds.

26. (1.) Penalties incurred under this Act are to be sued for by information in the Court of Exchequer, in England in the name of the Attorney General for England, in Scotland in the name of the Lord Advocate, and in Ireland in the name of the Attorney General for Ireland, and may be recovered with full costs of suit.

(2.) The Commissioners may, at their discretion, mitigate or stay or compound proceedings for any penalty, and reward any person who may inform them of any offence against this Act, or assist in the recovery of any penalty.

27. Any affidavit or declaration to be made in pursuance or for the purposes of this Act may be made before any of the Commissioners, or any officer or person authorised by them in that behalf, or before a person appointed to administer oaths in the Court of Chancery in England or Ireland, or before any person commissioned to take affidavits by the Court of Session in Scotland, or before any justice of the peace or notary public in any part of the United Kingdom, or at any place out of the United Kingdom before any person duly authorised to administer oaths there.

28. (1.) Every person who, having received any sum of money as or for the duty upon or in respect of any instrument, neglects or omits to appropriate such money to the due payment of such duty, or otherwise improperly withholds or detains the same, shall be accountable for the amount of such duty, and the same shall be a debt from him to Her Majesty, her heirs or successors, and recoverable as such accordingly.

(2.) The Court of Exchequer in England, Scotland, or Ireland may, upon application to be made for that purpose on behalf of the Commissioners, upon such affidavit as may appear sufficient, grant a rule requiring any such person as aforesaid, or the officer of any court, or the executor or administrator of such person or officer, to show cause why he should not deliver to the Commissioners an account upon oath of all duties and sums of money received by such person or officer, and why the same should not be forthwith paid to the Receiver General of Inland Revenue, or to such other person as the Commissioners may appoint to receive the same; and the court may make absolute any such rule, and enforce by attachment or otherwise the pay-

ment of any such duties or sums of money as on such proceedings may appear to be due, together with the costs of the proceedings.

#### SPECIAL REGULATIONS.

##### *As to Admissions generally.*

29. The duty payable under this Act upon an admission is to be denoted on the instrument of admission delivered to the person admitted, if there be any such instrument, or if not, on the register, entry or memorandum of the admission in the rolls, books, or records of the court, inn, college, borough, burgh, company, corporation, guild, or society in which the admission is made, and in cases in which no instrument of admission is delivered, and no register, entry, or memorandum is made, on the rescript or warrant for admission.

30. If any person whose office it is to prepare or deliver out any instrument of admission chargeable with any duty, or to register, enter, or make any memorandum of any admission in respect of which no instrument of admission is delivered to the person admitted, neglects or refuses, within one month after the admission, to prepare a duly stamped instrument of admission, or to make a proper and duly stamped register, entry, or memorandum of the admission, as the case may require, he shall forfeit the sum of ten pounds.

##### *As to Admissions to the Degree of a Barrister-at-Law in Ireland, and of Students to the Society of King's Inns, Dublin.*

31. Distinct accounts are to be kept of the sums following; that is to say:

- (1.) Ten pounds, part of the duty of fifty pounds payable on the admission to the degree of a barrister-at-law in Ireland of a person not previously admitted to that degree in England;
- (2.) Ten pounds, payable for duty on the like admission of a person who has been previously admitted to the said degree in England;
- (3.) Ten pounds, part of the duty payable on the admission of a student into the Society of King's Inns, Dublin:

And the said sums are respectively to be paid over by the Receiver General of Inland Revenue to the treasurer of the Society of King's Inns, Dublin, to be applied by him according to the directions of the said society.

32. If any person, who has been duly admitted a member of one of the Inns of Court in England, is afterwards duly admitted a student of the Society of King's Inns in Dublin, the duty paid

by him in respect of his former admission is, on application made within six months after the last admission, to be allowed and returned to him.

*As to Admissions or Appointments to and Grants of Offices or Employments.*

33. The fees and emoluments appertaining to any office or employment are, when practicable, to be estimated according to the average amount thereof for three years preceding the date of the admission, appointment, or grant, and in other cases according to the best information that can be obtained.

34. Where any office or employment is granted anew to any person upon the revocation of any former grant thereof or appointment thereto, in respect of which the proper duty has been paid, no duty is to be charged on the grant or appointment by way of renewal, unless the salary, fees, and emoluments of the office or employment are in any manner augmented, and in that case duty is to be charged on such last-mentioned grant or appointment in proportion to the amount of the augmentation only.

35. Upon the promotion of any person from any office or employment in Her Majesty's Customs, in respect of which he has paid the proper duty, to any other office or employment therein, the appointment of such person to the office or employment to which he is so promoted is to be charged with duty in respect only of any augmentation in his salary, fees, and emoluments.

*As to Agreements.*

36. The duty of sixpence upon an agreement may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the agreement is first executed.

*As to Appointments, &c. to Ecclesiastical Benefices, &c.*

37. The net yearly value of an ecclesiastical benefice, dignity, or promotion, or of a perpetual curacy, in England, whether the emoluments thereof consist of money or of produce, or partly of money and partly of produce, is to be ascertained and determined by the certificate of the Ecclesiastical Commissioners for England to be written on the instrument charged with duty.

Provided that two or more benefices, or a benefice and any ecclesiastical dignity or promotion episcopally or permanently united, shall be deemed one benefice only.

*As to Appraisements.*

38. (1.) Every appraiser, by whom an appraisement or valuation is made, shall, within fourteen days after the making thereof, write out the same,

in words and figures showing the full amount thereof, upon duly stamped material, and if he neglects or omits so to do, or in any other manner delivers out, or states the amount of, any such appraisement or valuation, shall forfeit the sum of fifty pounds.

(2.) Any person who receives from any appraiser, or pays for the making of, any appraisement or valuation, unless the same be written out and stamped as aforesaid, shall forfeit the sum of twenty pounds.

*As to Instruments of Apprenticeship.*

39. Every writing relating to the service or tuition of any apprentice, clerk, or servant placed with any master to learn any profession, trade, or employment, (except articles of clerkship to attorneys and others hereby specifically charged with duty,) is to be deemed an instrument of apprenticeship.

40. The full sum of money, and the value of any other matter or thing, paid, given, or assigned, or secured to be paid, given, or assigned, to or for the benefit of the master with or in respect of any apprentice, clerk, or servant, (not being a person bound to serve in order to admission in any court,) is to be fully and truly set forth in an instrument of apprenticeship; and if any such sum, or other matter or thing, be paid, given, assigned, or secured as aforesaid, and no such instrument be made, or if any such instrument be made, and such sum, or the value of such other matter or thing, be not set forth therein as aforesaid, the master, and also the apprentice himself, if of full age, and any other person being a party to the contract, or by whom any such sum, or other matter or thing, is paid, given, assigned, or secured, shall forfeit the sum of twenty pounds, and the contract, and the instrument (if any) containing the same, shall be null and void.

*As to original Articles of Clerkship.*

41. (1.) Where the same articles are a qualification for the admission of any person not only as an attorney or solicitor in any of Her Majesty's courts at Westminster, but also as an attorney or solicitor in any of the courts of the counties palatine of Lancaster and Durham, such articles are not to be charged with more than one duty of eighty pounds.

(2.) Where any person has become bound by duly stamped articles in order to his admission as an attorney or solicitor in any of the courts of the counties palatine of Lancaster and Durham, such articles shall, on payment of such further amount of duty as, together with the amount of duty previously paid thereon, will make up the sum of eighty pounds, be impressed with a stamp denoting the payment of such further duty, and

shall thereupon be considered to be sufficiently stamped for the purpose of entitling such person to admission in any of the courts at Westminster.

42. (1.) Where the same articles are a qualification for the admission of any person not only as a writer to the signet, or as a solicitor, agent, or attorney in any of the Courts of Session, Justiciary, or Commission of Teinds, but also as a procurator or solicitor in any inferior court in Scotland, such articles are not to be charged with more than one duty of sixty pounds.

(2.) Where any person has become bound by duly stamped articles in order to his admission as a procurator or solicitor in any inferior court in Scotland, such articles shall, on payment of such further amount of duty as, together with the amount previously paid thereon, will make up the sum of sixty pounds, be impressed with a stamp denoting the payment of such further duty, and shall thereupon be considered to be sufficiently stamped for entitling such person to admission as a writer to the signet, or as a solicitor, agent, or attorney in the Court of Session, Justiciary, or Commission of Teinds.

43. Save as herein-before provided, articles of clerkship are not to be stamped at any time after the expiration of six months from the date thereof, except upon payment of penalties, as follows:

(1.) If brought to be stamped within one year after date, ten pounds:

(2.) If so brought after one year, and within five years after date,—

For every complete year, and also for any additional part of a year elapsed since the date, ten pounds:

(3.) In every other case, fifty pounds.

44. The sum of fourteen pounds, part of the duty payable on articles of clerkship in Ireland, shall be carried to a separate account, and paid over by the Receiver General of Inland Revenue to the treasurer of the Society of King's Inns, Dublin, to be applied by him according to the directions of the said society.

*As to Bank Notes, Bills of Exchange, and Promissory Notes.*

45. The term "banker" means and includes any corporation, society, partnership, and persons, and every individual person carrying on the business of banking in the United Kingdom.

The term "bank note" means and includes—

(1.) Any bill of exchange or promissory note issued by any banker, other than the Governor and Company of the Bank of England, for the payment of money not exceeding one hundred pounds to the bearer on demand:

(2.) Any bill of exchange or promissory note so issued which entitles or is intended to entitle the bearer or holder thereof, without indorsement, or without any further or other indorsement than may be thereon at the time of the issuing thereof, to the payment of money not exceeding one hundred pounds, on demand, whether the same be so expressed or not, and in whatever form, and by whomsoever such bill or note is drawn or made.

46. A bank note issued duly stamped, or issued unstamped by a banker duly licensed or otherwise authorised to issue unstamped bank notes, may be from time to time re-issued without being liable to any stamp duty by reason of such re-issuing.

47. (1.) If any banker, not being duly licensed or otherwise authorised to issue unstamped bank notes, issues, or causes or permits to be issued, any bank note not being duly stamped, he shall forfeit the sum of fifty pounds.

(2.) If any person receives or takes any such bank note in payment or as a security, knowing the same to have been issued unstamped, contrary to law, he shall forfeit the sum of twenty pounds.

48. (1.) The term "bill of exchange" for the purposes of this Act includes also draft, order, cheque, and letter of credit, and any document or writing (except a bank note) entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money therein mentioned.

(2.) An order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, is to be deemed for the purposes of this Act a bill of exchange for the payment of money on demand.

(3.) An order for the payment of any sum of money weekly, monthly, or at any other stated periods, and also any order for the payment by any person at any time after the date thereof of any sum of money, and sent or delivered by the person making the same to the person by whom the payment is to be made, and not to the person to whom the payment is to be made, or to any person on his behalf, is to be deemed for the purposes of this Act a bill of exchange for the payment of money on demand.

49. (1.) The term "promissory note" means and includes any document or writing (except a bank note) containing a promise to pay any sum of money.

(2.) A note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, is to be deemed for the purposes of this Act a promissory note for the said sum of money.

50. The fixed duty of one penny on a bill of exchange for the payment of money on demand may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the bill is signed before he delivers it out of his hands, custody, or power.

51. (1.) The ad valorem duties upon bills of exchange and promissory notes drawn or made out of the United Kingdom are to be denoted by adhesive stamps.

(2.) Every person into whose hands any such bill or note comes in the United Kingdom before it is stamped shall, before he presents for payment, or indorses, transfers, or in any manner negotiates or pays such bill or note, affix thereto a proper adhesive stamp or proper adhesive stamps of sufficient amount, and cancel every stamp so affixed thereto.

(3.) Provided as follows:

(a.) If at the time when any such bill or note comes into the hands of any bona fide holder thereof there is affixed thereto an adhesive stamp effectually obliterated, and purporting and appearing to be duly cancelled, such stamp shall, so far as relates to such holder, be deemed to be duly cancelled, although it may not appear to have been so affixed or cancelled by the proper person.

(b.) If at the time when any such bill or note comes into the hands of any bona fide holder thereof there is affixed thereto an adhesive stamp not duly cancelled, it shall be competent for such holder to cancel such stamp as if he were the person by whom it was affixed, and upon his so doing such bill or note shall be deemed duly stamped, and as valid and available as if the stamp had been duly cancelled by the person by whom it was affixed.

(4.) But neither of the foregoing provisions is to relieve any person from any penalty incurred by him for not cancelling any adhesive stamp.

52. A bill of exchange or promissory note purporting to be drawn or made out of the United Kingdom is, for the purposes of this Act, to be

deemed to have been so drawn or made, although it may in fact have been drawn or made within the United Kingdom.

53. (1.) Where a bill of exchange or promissory note has been written on material bearing an impressed stamp of sufficient amount but of improper denomination, it may be stamped with the proper stamp on payment of the duty, and a penalty of forty shillings if the bill or note be not then payable according to its tenor, and of ten pounds if the same be so payable.

(2.) Except as aforesaid, no bill of exchange or promissory note shall be stamped with an impressed stamp after the execution thereof.

54. (1.) Every person who issues, indorses, transfers, negotiates, presents for payment, or pays any bill of exchange or promissory note liable to duty and not being duly stamped shall forfeit the sum of ten pounds, and the person who takes or receives from any other person any such bill or note not being duly stamped either in payment or as a security, or by purchase or otherwise, shall not be entitled to recover thereon, or to make the same available for any purpose whatever.

(2.) Provided that if any bill of exchange for the payment of money on demand, liable only to the duty of one penny, is presented for payment unstamped, the person to whom it is so presented may affix thereto a proper adhesive stamp, and cancel the same, as if he had been the drawer of the bill, and may, upon so doing, pay the sum in the said bill mentioned, and charge the duty in account against the person by whom the bill was drawn, or deduct such duty from the said sum, and such bill is, so far as respects the duty, to be deemed good and valid.

(3.) But the foregoing proviso is not to relieve any person from any penalty he may have incurred in relation to such bill.

55. When a bill of exchange is drawn in a set according to the custom of merchants, and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated apart from such duly stamped bill, be exempt from duty; and upon proof of the loss or destruction of a duly stamped bill forming one of a set, any other bill of the set which has not been issued or in any manner negotiated apart from such lost or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of such lost or destroyed bill.

#### *As to Bills of Lading.*

56. (1.) A bill of lading is not to be stamped after the execution thereof.

(2.) Every person who makes or executes any bill of lading not duly stamped shall forfeit the sum of fifty pounds.

*As to Bills of Sale.*

57. A copy of a bill of sale is not to be filed in any court, unless the original, duly stamped, is produced to the proper officer.

*As to Bonds given in relation to the Duties of Customs and Excise.*

58. If any person required by any Act of Parliament, or by the direction of the Commissioners of Customs or Inland Revenue, or any of their officers, to give or enter into any bond for or in respect of any duties of customs or excise, or for preventing frauds or evasions thereof, or for any matter or thing relating thereto, includes in one and the same bond any goods or things belonging to more persons than one, not being co-partners or joint tenants, or tenants in common, he shall for every such offence forfeit the sum of fifty pounds.

*As to the Certificates of Attorneys and others.*

59. (1.) Every person who in any part of the United Kingdom—

(a.) Directly or indirectly acts or practises in any court as an attorney, solicitor, proctor, writer to the signet, agent, or procurator, or as a notary public, without having in force at the time a duly stamped certificate according to the provisions herein-after contained and referred to ;

(b.) On applying for any such certificate does not truly specify the facts and circumstances upon which the amount of duty chargeable upon his certificate depends,

shall forfeit the sum of fifty pounds, and shall be incapable of maintaining any action or suit for the recovery of any fee, reward, or disbursement on account of or in relation to any act or proceeding done or taken by him in any such capacity.

(2.) Any person in whose name, either alone or together with any other person, any proceeding is taken in any court, shall, unless the proceeding is set aside by the court as irregular, or unless the contrary is otherwise satisfactorily proved, be deemed to have acted in such proceeding.

60. Every person who (not being a serjeant-at-law, barrister, or a duly certificated attorney, solicitor, proctor, notary public, writer to the signet, agent, procurator, conveyancer, special pleader, or draftsman in equity) either directly or indirectly, for or in expectation of any fee, gain, or reward, draws or prepares any instrument relating to real or personal estate, or any proceedings in law or equity, shall forfeit the sum of fifty pounds.

*Provided as follows:—*

- (1.) This section does not extend to
  - (a.) Any public officer drawing or preparing instruments in the course of his duty ;
  - (b.) Any person employed merely to engross any instrument or proceedings.
- (2.) The term "instrument" in this section does not include—
  - (a.) Wills or other testamentary instruments ;
  - (b.) Agreements under hand only ;
  - (c.) Letters or powers of attorney ;
  - (d.) Transfers of stock containing no trust or limitation thereof.

61. It shall not be necessary for any person to take out in England, Scotland, or Ireland more than one certificate for any one year.

62. The certificates of attorneys, solicitors, and proctors in England and Ireland are to be applied for, taken out, issued, dated, and stamped,—

- (1.) In England, in accordance with the provisions in that behalf of an Act of the sixth and seventh years of Her Majesty, intituled "An Act for consolidating and amending several of the laws relating to attorneys and solicitors," and of an Act of the twenty-third and twenty-fourth years of Her Majesty, intituled "An Act to amend the laws relating to attorneys and solicitors and certificated conveyancers."
- (2.) In Ireland in accordance with the provisions in that behalf of "The Attorneys and Solicitors Act, Ireland, 1866."

63. Every person required to take out a certificate to authorise him to practise,—

- (1.) In Scotland, as a writer to the signet, solicitor, agent, or procurator ;
- (2.) In England or Ireland, as a conveyancer special pleader, or draftsman in equity ;
- (3.) In any part of the United Kingdom, as a notary public,

shall yearly and every year, before he does any act in any of the aforesaid capacities, deliver to the Commissioners, or to their proper officer, in such manner and form as they shall direct, a note in writing stating his full name and the place where he carries on his business, and thereupon, and upon payment of the proper duty, shall be entitled to such certificate, which is to be duly stamped and issued to him by the Commissioners.

64. The certificates in this section specified are to be dated and to expire at the times herein-after in that behalf mentioned ; that is to say,

- (1.) The certificates of writers to the signet, solicitors, agents, attorneys, procurators, and notaries public in Scotland, and of conveyancers, special pleaders, and draftsmen in equity in England, are to be dated

if taken out between the thirty-first of October and the first of December, on the first of November, and if taken out at any other time, on the day on which they are issued, and are in all cases to expire on the thirty-first of October next after their date.

- (2.) The certificates of notaries public in England are to be dated, if taken out between the fifteenth of November and the sixteenth of December, on the sixteenth of November, and if taken out at any other time, on the day on which they are issued, and are in all cases to expire on the fifteenth of November next after their date.
- (3.) The certificates of conveyancers, special pleaders, draftsmen in equity, and notaries public in Ireland, are to be dated on the day on which they are issued, and are to expire, as to the certificates of notaries public, on the twenty-fifth day of March next after their date, and in all other cases on the sixth day of January next after their date.

*As to the Certificate of Registration of a Design.*

65. The duty of five pounds upon the certificate of the registration of a design is to be denoted by a stamp to be specially appropriated for expressing and denoting the said duty.

*As to Charter-parties.*

66. The duty upon an instrument chargeable with duty as a charter-party may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the instrument is last executed, or by whose execution it is completed as a binding contract.

67. Where any document chargeable with duty as a charter-party, and not being duly stamped, is first executed out of the United Kingdom, any party thereto may, within ten days after it has been first received in the United Kingdom, and before it has been executed by any person in the United Kingdom, affix thereto an adhesive stamp denoting the duty chargeable thereon, and at the same time cancel such adhesive stamp, and the instrument with an adhesive stamp thereon so affixed and cancelled shall be deemed duly stamped.

68. An executed instrument chargeable with duty as a charter-party, and not being duly stamped, may be stamped with an impressed stamp upon the following terms; that is to say,

- (1.) Within seven days after the first execution thereof, on payment of the duty and a penalty of four shillings and sixpence;
- (2.) After seven days, but within one month after the first execution thereof, on pay-

ment of the duty and a penalty of ten pounds; and shall not in any other case be stamped with an impressed stamp.

*As to Contract Notes.*

69. (1.) The duty on a contract note may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the note is first executed.

(2.) Every person who makes or executes any contract note chargeable with duty, and not being duly stamped, shall forfeit the sum of twenty pounds.

(3.) No broker, agent, or other person shall have any legal claim to any charge for brokerage, commission, or agency, with reference to the sale or purchase of any stock or marketable security of the value of five pounds or upwards mentioned or referred to in any contract note, unless such note is duly stamped.

*As to Conveyances on Sale.*

70. The term "conveyance on sale" includes every instrument, and every decree or order of any court or of any commissioners, whereby any property upon the sale thereof is legally or equitably transferred to or vested in the purchaser, or any other person on his behalf or by his direction.

71. (1.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any stock or marketable security, such conveyance is to be charged with ad valorem duty in respect of the value of such stock or security.

(2.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any security not being a marketable security, such conveyance is to be charged with ad valorem duty in respect of the amount due on the day of the date thereof for principal and interest upon such security.

72. (1.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period, so that the total amount to be paid can be previously ascertained, such conveyance is to be charged in respect of such consideration with ad valorem duty on such total amount.

(2.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically in perpetuity, or for any indefinite period not terminable with life, such conveyance is to be charged in respect of such consideration with ad valorem duty on the total amount which will or may, according to the terms of sale, be payable during the period of twenty years next after the day of the date of such instrument.

(3.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically during any life or lives, such conveyance is to be charged in respect of such consideration with ad valorem duty on the amount which will or may, according to the terms of sale, be payable during the period of twelve years next after the day of the date of such instrument.

(4.) Provided that no conveyance on sale chargeable with ad valorem duty in respect of any periodical payments, and containing also provision for securing such periodical payments, is to be charged with any duty whatsoever in respect of such provision, and no separate instrument made in any such case for securing such periodical payments is to be charged with any higher duty than ten shillings.

73. Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money, or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with ad valorem duty.

74. (1.) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts or parcels by different instruments, the consideration is to be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such conveyance is to be charged with ad valorem duty in respect of such distinct consideration.

(2.) Where property contracted to be purchased for one consideration for the whole by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts or parcels by separate instruments to the persons by or for whom the same was purchased for distinct parts of the consideration, the conveyance of each separate part or parcel is to be charged with ad valorem duty in respect of the distinct part of the consideration therein specified.

(3.) Where a person having contracted for the purchase of any property but not having obtained a conveyance thereof contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance is to be charged with ad valorem duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(4.) Where a person having contracted for the purchase of any property but not having obtained

a conveyance contracts to sell the whole, or any part or parts thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts or parcels, the conveyance of each part or parcel is to be charged with ad valorem duty, in respect only of the consideration moving from the sub-purchaser thereof, without regard to the amount or value of the original consideration.

(5.) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with ad valorem duty in respect of the consideration moving from him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be exempt from the said ad valorem duty, and chargeable only with the duty to which it may be liable under any general description, but such last-mentioned duty shall not exceed the ad valorem duty.

75. Where upon the sale of any annuity or other right not before in existence such annuity or other right is not created by actual grant or conveyance, but is only secured by bond, warrant of attorney, covenant, contract, or otherwise, the bond or other instrument, or some one of such instruments, if there be more than one, is to be charged with the same duty as an actual grant or conveyance, and is for all the purposes of this Act to be deemed an instrument of conveyance on sale.

76. Where there are several instruments of conveyance for completing the purchaser's title to the property sold, the principal instrument of conveyance only is to be charged with ad valorem duty, and the other instruments are to be respectively charged with such other duty as they may be liable to, but such last-mentioned duty shall not exceed the ad valorem duty payable in respect of the principal instrument.

77. (1.) In the cases below specified the principal instrument is to be ascertained in the following manner:

(a.) Where any copyhold or customary estate is conveyed by a deed, no surrender being necessary, the deed is to be deemed the principal instrument:

(b.) In other cases of copyhold or customary estates, the surrender or grant, if made out of court, or the memorandum thereof, and the copy of court roll of the surrender or grant, if made in court, shall be deemed the principal instrument:

(c.) Where in Scotland there is a disposition or assignation executed by the seller, and any other instrument is executed for completing the title, the disposition or assign-



nation is to be deemed the principal instrument.

(2.) In any other case the parties may determine for themselves which of several instruments is to be deemed the principal instrument, and may pay the ad valorem duty thereon accordingly.

*As to Conveyances on any occasion except Sale or Mortgage.*

78. Every instrument, and every decree or order of any court or of any commissioners, whereby any property on any occasion, except a sale or mortgage, is transferred to or vested in any person, is chargeable with duty as a conveyance or transfer of property.

Provided that a conveyance or transfer made for effectuating the appointment of a new trustee is not to be charged with any higher duty than ten shillings.

*As to attested Copies and Extracts.*

79. An attested or otherwise authenticated copy or extract of or from—

- (1.) An instrument chargeable with any duty;
  - (2.) An original will, testament, or codicil;
  - (3.) The probate or probate copy of a will or codicil;
  - (4.) Letters of administration or a confirmation of a testament,
- may be stamped at any time within fourteen days after the date of the attestation or authentication, on payment of the duty only, without any penalty.

*As to certified Copies and Extracts from Registers of Births, &c.*

80. The duty upon a certified copy or extract of or from any register of births, baptisms, marriages, deaths, or burials is to be paid by the person requiring the copy or extract, and may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the copy or extract is signed before he delivers the same out of his hands, custody, or power.

*As to Copyhold and Customary Estates.*

81. (1.) The copy of court roll of a surrender or grant made out of court shall not be admissible or available as evidence of the surrender or grant, unless the surrender or grant, or the memorandum thereof, is duly stamped, of which fact the certificate of the steward of the manor on the face of such copy shall be sufficient evidence.

(2.) The entry upon the court rolls of a surrender or grant shall not be admissible or available as evidence of the surrender or grant unless the surrender or grant, if made out of court, or the memorandum thereof, or the copy of court roll of the surrender or grant, if made in court, is duly stamped, of which fact the certificate of

the steward of the manor in the margin of such entry shall be sufficient evidence.

82. No instrument is to be charged more than once with duty by reason of relating to several distinct tenements, in respect whereof several fines or fees are due to the lord or steward of the manor.

83. (1.) All the facts and circumstances affecting the liability to ad valorem duty of the copy of court roll of any surrender or grant made in court, or the amount of ad valorem duty with which any such copy of court roll is chargeable, are to be fully and truly stated in a note to be delivered to the steward of the manor before the surrender or grant is made.

(2.) Every person who, with intent to defraud Her Majesty, her heirs or successors,—

- (a.) Makes in court any surrender before such a note as aforesaid has been delivered to the steward of the manor;
- (b.) Being employed or concerned in or about the preparation of any such note as aforesaid, neglects or omits fully and truly to state therein all the above-mentioned facts and circumstances,

shall forfeit the sum of fifty pounds.

84. The steward of every manor shall refuse—

- (1.) To accept in court any surrender, or to make in court any grant, until such a note as is required by the last preceding section has been delivered to him;
- (2.) To enter on the court rolls, or accept any presentment of, or admit any person to be tenant under or by virtue of, any surrender or grant made out of court, or any deed which is not duly stamped;

And in any case in which he does not so refuse shall forfeit the sum of fifty pounds.

85. The steward of every manor shall, within four months from the day on which any surrender or grant is made in court, make out a duly stamped copy of court roll of such surrender or grant, and have the same ready for delivery to the person entitled thereto, and if he neglects so to do shall forfeit the sum of fifty pounds; and the duty payable in respect of such copy of court roll shall be a debt to Her Majesty, her heirs or successors, from such steward, whether he shall have received it or not, and shall be recoverable by the summary means provided for the recovery of duties received and not applied, and if he has not received the duty the same shall also be a debt to Her Majesty, her heirs or successors, from the party entitled to such copy, and recoverable from him in manner aforesaid.

86. The steward of any manor may, before he accepts in court any surrender or makes in court

any grant, demand and insist on the payment of his lawful fees in relation to the surrender or grant, together with the duty payable on the copy of court roll thereof, and may refuse to proceed in any such matter or to deliver such copy of court roll to any person until such fees and duty are paid.

*As to Delivery Orders and Warrants for Goods.*

87. The term "delivery order" means any document or writing entitling, or intended to entitle, any person therein named, or his assigns, or the holder thereof, to the delivery of any goods, wares, or merchandise of the value of forty shillings or upwards lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such document or writing being signed by or on behalf of the owner of such goods, wares, or merchandise, upon the sale or transfer of the property therein.

88. The term "warrant for goods" means any document or writing, being evidence of the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods, wares, or merchandise lying in any warehouse or dock, or upon any wharf, and signed or certified by or on behalf of the person having the custody of such goods, wares, or merchandise.

89. The duty upon a delivery order or warrant for goods may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the instrument is made, executed, or issued.

90. The duty upon a delivery order is, in the absence of any special stipulation, to be paid by the person to whom the order is given, and any person from whom a delivery order chargeable with duty is required may refuse to give it, unless or until the amount of the duty is paid to him.

91. (1.) Every document or writing in the nature of a delivery order is to be deemed to have been given upon a sale of, or transfer of the property in, goods, wares, or merchandise of the value of forty shillings or upwards, unless the contrary is expressly stated therein; and every person who—

- (a.) Untruly states, or knowingly or willingly allows it to be untruly stated, in any such document or writing, either that the transaction to which it relates is not a sale or transfer of property, or that the goods, wares, or merchandise to which it relates are not of the value of forty shillings;
- (b.) Makes, signs, or issues any delivery order chargeable with duty, but not being duly stamped;

(c.) Knowingly or wilfully, either himself, or by his servant or any other person, procures or requires or authorises the delivery of, or delivers, any goods, wares, or merchandise mentioned in any delivery order which is not duly stamped, or which contains to his knowledge any false statement with reference either to the nature of the transaction, or the value of the goods, wares, or merchandise, shall forfeit the sum of twenty pounds.

(2.) But no delivery order is, by reason of the same being unstamped, to be deemed invalid in the hands of the person having the custody of, or delivering out, the goods, wares, or merchandise therein mentioned, unless such person is proved to have been party or privy to some fraud on the revenue in relation thereto.

92. Every person who makes, executes, or issues, or receives or takes by way of security or indemnity, any warrant for goods not being duly stamped, shall forfeit the sum of twenty pounds.

*As to Duplicates and Counterparts.*

93. The duplicate or counterpart of an instrument chargeable with duty (except the counterpart of an instrument chargeable as a lease, such counterpart not being executed by or on behalf of any lessor or grantor,) is not to be deemed duly stamped unless it is stamped as an original instrument, or unless it appears by some stamp impressed thereon that the full and proper duty has been paid upon the original instrument of which it is the duplicate or counterpart.

*As to Exchange or Escambion and Partition or Division.*

94. Where upon the exchange of any real or heritable property for any other real or heritable property, or upon the partition or division of any real or heritable property, any consideration exceeding in amount or value one hundred pounds is paid or given, or agreed to be paid or given, for equality, the principal or only instrument whereby such exchange or partition or division is effected is to be charged with the same ad valorem duty as a conveyance on sale for such consideration, and with such duty only; and where in any such case there are several instruments for completing the title of either party, the principal instrument is to be ascertained, and the other instruments are to be charged with duty according to the provisions of the seventy-sixth and seventy-seventh sections of this Act.

*As to Grants of Honours and Dignities.*

95. (1.) Where two or more honours or dignities are granted by the same letters patent to the same person, such letters patent are to be charged

with the proper duty in respect of the highest in point of rank only.

(2.) Where any honour or dignity, honours or dignities, is or are granted to any person or persons in remainder, the letters patent are to be charged with such further duty in respect of every remainder as would have been payable for an original grant of the same honour or dignity, honours or dignities.

*As to Leases, &c.*

96. (1.) An agreement for a lease or tack, or with respect to the letting of any lands, tenements, or heritable subjects for any term not exceeding thirty-five years, is to be charged with the same duty as if it were an actual lease or tack made for the term and consideration mentioned in the agreement.

(2.) A lease or tack made subsequently to, and in conformity with, such an agreement duly stamped, is to be charged with the duty of sixpence only.

97. (1.) Where the consideration, or any part of the consideration, for which any lease or tack is granted or agreed to be granted, does not consist of money, but consists of any produce or other goods, the value of such produce or goods is to be deemed a consideration in respect of which the lease or tack or agreement is chargeable with ad valorem duty, and where it is stipulated that the value of such produce or goods is to amount at least to, or is not to exceed, a given sum, or where the lessee is specially charged with, or has the option of paying after, any permanent rate of conversion, the value of such produce or goods is, for the purpose of assessing the ad valorem duty, to be estimated at such given sum, or according to such permanent rate.

(2.) A lease or tack or agreement made either entirely or partially for any such consideration, if it contains a statement of the value of such consideration, and is stamped in accordance with such statement, is, so far as regards the subject matter of such statement, to be deemed duly stamped, unless or until it is otherwise shown that such statement is incorrect, and that it is in fact not duly stamped.

98. (1.) A lease or tack, or agreement for a lease or tack, or with respect to any letting, is not to be charged with any duty in respect of any penal rent, or increased rent in the nature of a penal rent, thereby reserved or agreed to be reserved or made payable, or by reason of being made in consideration of the surrender or abandonment of any existing lease, tack, or agreement of or relating to the same subject matter.

(2.) No lease made for any consideration or considerations in respect whereof it is chargeable

with ad valorem duty, and in further consideration either of a covenant by the lessee to make, or of his having previously made, any substantial improvement of or addition to the property demised to him, or of any covenant relating to the matter of the lease, is to be charged with any duty in respect of such further consideration.

(3.) No lease for a life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, and no lease for a term absolute not exceeding twenty-one years, granted by an ecclesiastical corporation aggregate or sole, is to be charged with any higher duty than thirty-five shillings.

(4.) No lease for a definite term exceeding thirty-five years granted under the "Trinity College (Dublin) Leasing and Perpetuity Act, 1851," is to be charged with any higher duty than would have been chargeable thereon if it had been a lease for a definite term not exceeding thirty-five years.

(5.) No lease or tack, or agreement for a lease or tack, in Scotland, of any dwelling-house or tenement, or part of a dwelling-house or tenement, for any definite term not exceeding a year, at a rent not exceeding the rate of ten pounds per annum, is to be charged with any higher duty than one penny.

99. The duty upon an instrument chargeable with duty as a lease or tack for any definite term less than a year of—

(1.) Any dwelling-house or tenement, or part of a dwelling-house or tenement, at a rent not exceeding the rate of ten pounds per annum;

(2.) Any furnished dwelling-house or apartments;

Or upon the duplicate or counterpart of any such instrument, may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the instrument is first executed.

100. (1.) Every person who executes, or prepares or is employed in preparing, any instrument upon which the duty may, under the provisions of the last preceding section, be denoted by an adhesive stamp, and which is not, at or before the execution thereof, duly stamped, shall forfeit the sum of five pounds.

(2.) Provided that nothing in this section contained shall render any person liable to the said penalty of five pounds in respect of any letters or correspondence.

*As to Letters of Allotment, Scrip Certificates, and Scrip.*

101. Every person who executes, grants, issues, or delivers out any document chargeable with duty as a letter of allotment, letter of renunciation, or scrip certificate, or as scrip, before the

same is duly stamped, shall forfeit the sum of twenty pounds.

*As to Letters or Powers of Attorney and Voting Papers.*

102. (1.) Every letter or power of attorney for the purpose of appointing a proxy to vote at a meeting, and every voting paper, hereby respectively charged with the duty of one penny, is to specify the day upon which the meeting at which it is intended to be used is to be held, and is to be available only at the meeting so specified, or any adjournment thereof.

(2.) The said duty of one penny may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the instrument is executed.

(3.) Every person who makes or executes, or votes or attempts to vote, under or by means of any such letter or power of attorney or voting paper, not being duly stamped, shall forfeit the sum of fifty pounds.

(4.) Every vote given or tendered under the authority or by means of any such letter or power of attorney or voting paper, not being duly stamped, shall be absolutely null and void.

(5.) And no such letter or power of attorney or voting paper shall on any pretence whatever be stamped after the execution thereof by any person.

103. A letter or power of attorney for the sale, transfer, or acceptance of any of the Government or Parliamentary stocks or funds, duly stamped for that purpose, is not to be charged with any further duty by reason of containing an authority for the receipt of the dividends on the same stocks or funds.

104. A writing under hand only containing an order, request, or direction from the owner or proprietor of any stock to any company or to any officer of any company, or to any banker, to pay the dividends or interest arising from such stock to any person therein named, is not chargeable with duty as a letter or power of attorney.

*As to Mortgages, &c.*

105. The term "mortgage" means a security by way of mortgage for the payment of any definite and certain sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced, or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be;

And includes—

Conditional surrender by way of mortgage, further charge, wadset, and heritable

bond, disposition, assignation, or tack in security, and eik to a reversion of or affecting any lands, estate, or property, real or personal, heritable or moveable, whatsoever:

Also any deed containing an obligation to infest any person in an annual rent, or in lands or other heritable subjects in Scotland, under a clause of reversion, but without any personal bond or obligation therein contained for payment of the money or stock intended to be secured:

Also any conveyance of any lands, estate, or property whatsoever in trust to be sold or otherwise converted into money, intended only as a security, and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise, except where such conveyance is made for the benefit of creditors generally, or for the benefit of creditors specified who accept the provision made for payment of their debts in full satisfaction thereof, or who exceed five in number:

Also any defeasance, letter of reversion, tack bond, declaration, or other deed or writing for defeating or making redeemable or explaining or qualifying any conveyance, disposition, assignation, or tack of any lands, estate, or property whatsoever, apparently absolute but intended only as a security:

Also any agreement, contract, or bond accompanied with a deposit of title deeds for making a mortgage, wadset, or any such other security or conveyance as aforesaid of any lands, estate, or property comprised in such title deeds, or for pledging or charging the same as a security:

And also any deed whereby a real burden is declared or created on lands or heritable subjects in Scotland.

106. A security for the transfer or retransfer of any stock is to be charged with the same duty as a similar security for a sum of money equal in amount to the value of such stock; and a transfer, assignment, disposition, or assignation of any such security, and a reconveyance, release, discharge, surrender, re-surrender, warrant to vacate, or renunciation of any such security, shall be charged with the same duty as an instrument of the same description relating to a sum of money equal in amount to the value of such stock.

107. (1.) A security for the payment or repayment of money to be lent, advanced, or paid, or which may become due upon an account current, either with or without money previously due, is

to be charged, where the total amount secured or to be ultimately recoverable is in any way limited, with the same duty as a security for the amount so limited.

(2.) Where such total amount is unlimited, the security is to be available for such an amount only as the ad valorem duty impressed thereon extends to cover.

(3.) Provided that no money to be advanced for the insurance of any property comprised in any such security against damage by fire, or for keeping up any policy of life insurance comprised in such security, or for effecting in lieu thereof any new policy, or for the renewal of any grant or lease of any property comprised in such security upon the dropping of any life whereon such property is held, shall be reckoned as forming part of the amount in respect whereof the security is chargeable with ad valorem duty.

108. A security for the payment of any rent-charge, annuity, or periodical payments, by way of repayment, or in satisfaction or discharge of any loan, advance, or payment intended to be so repaid, satisfied, or discharged, is to be charged with the same duty as a similar security for the payment of the sum of money so lent, advanced, or paid.

109. No transfer of a duly stamped security, and no security by way of further charge for money or stock, added to money or stock previously secured by a duly stamped instrument, is to be charged with any duty by reason of containing any further or additional security for the money or stock transferred or previously secured, or the interest or dividends thereof, or any new covenant, proviso, power, stipulation, or agreement in relation thereto, or any further assurance of the property comprised in the transferred or previous security.

110. (1.) Where any copyhold or customary lands or hereditaments are mortgaged alone by means of a conditional surrender or grant, the ad valorem duty is to be charged on the surrender or grant, if made out of court, or the memorandum thereof, and on the copy of court roll of the surrender or grant, if made in court.

(2.) Where any copyhold or customary lands or hereditaments are mortgaged, together with other property, for securing the same money or the same stock, the ad valorem duty is to be charged on the instrument relating to the other property, and the surrender or grant, or the memorandum thereof, or the copy of court roll of the surrender or grant, as the case may be, is to be charged with duty as if the surrender or grant were not made upon a mortgage, but such last-mentioned duty shall not exceed the said ad valorem duty.

111. An instrument chargeable with ad valorem duty as a mortgage is not to be charged with any other duty by reason of the equity of redemption in the mortgaged property being thereby conveyed or limited in any other manner than to, or in trust for, or according to the direction of, a purchaser.

112. The exemption from stamp duty conferred by the Act of the sixth and seventh years of King William the Fourth, chapter thirty-two, for the regulation of benefit building societies, shall not extend to any mortgage to be made after the passing of this Act, except a mortgage by a member of a benefit building society for securing the repayment to the society of money not exceeding five hundred pounds.

113. The term "foreign security" means and includes every security for money by or on behalf of any foreign or colonial state, government, municipal body, corporation, or company, bearing date or signed after the third day of June one thousand eight hundred and sixty-two (except an instrument chargeable with duty as a bill of exchange or promissory note),

- (1.) Which is made or issued in the United Kingdom;
- (2.) Upon which any interest is payable in the United Kingdom;
- (3.) Which is assigned, transferred, or in any manner negotiated in the United Kingdom.

114. Every person who in the United Kingdom makes, issues, assigns, transfers, or negotiates, or pays any interest upon, any foreign security not being duly stamped, shall forfeit the sum of twenty pounds.

115. The Commissioners may at any time, without reference to the date thereof, allow any foreign security to be stamped without the payment of any penalty, upon being satisfied, in any manner that they may think proper, that it was not made or issued, and has not been transferred, assigned, or negotiated within the United Kingdom, and that no interest has been paid thereon within the United Kingdom.

#### *As to Notarial Acts.*

116. The duty upon a notarial act, and upon the protest by a notary public of a bill of exchange or promissory note, may be denoted by an adhesive stamp, which is to be cancelled by the notary.

#### *As to Policies of Insurance.*

117. (1.) The term "insurance" includes assurance, and the term "policy" includes every writing whereby any contract of insurance is

made, or agreed to be made, or is evidenced; and, except as herein-after mentioned, this Act does not apply to policies of sea insurance.

(2.) A policy of sea insurance made or executed out of, but being in any manner enforceable within, the United Kingdom, is to be charged with duty under the Act of the thirtieth year of Her Majesty's reign, chapter twenty-three, and may be stamped at any time within two months after it has been first received in the United Kingdom on payment of the duty only.

118. Every person who—

- (1.) Receives, or takes credit for, any premium or consideration for any contract of insurance, and does not within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance;
- (2.) Makes, executes, or delivers out, or pays or allows in account, or agrees to pay or allow in account, any money upon or in respect of, any policy which is not duly stamped,

shall forfeit the sum of twenty pounds.

119. (1.) The duties imposed by this Act upon policies of insurance may be denoted by adhesive stamps, or partly by adhesive and partly by impressed stamps.

(2.) When the whole or any part of the duty upon a policy of insurance is denoted by an adhesive stamp, such adhesive stamp is to be cancelled by the person by whom the policy is first executed.

(3.) In default of such cancellation, the person making the insurance shall forfeit the sum of twenty pounds.

#### *As to Receipts.*

120. The term "receipt" means and includes any note, memorandum, or writing whatsoever whereby any money amounting to two pounds or upwards, or any bill of exchange or promissory note for money amounting to two pounds or upwards, is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand, or any part of a debt or demand, of the amount of two pounds or upwards, is acknowledged to have been settled, satisfied, or discharged, or which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person.

121. The duty upon a receipt may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the receipt is given before he delivers it out of his hands.

122. A receipt given without being stamped may be stamped with an impressed stamp upon the terms following; that is to say,

- (1.) Within fourteen days after it has been given, on payment of the duty and a penalty of five pounds;
  - (2.) After fourteen days, but within one month, after it has been given, on payment of the duty and a penalty of ten pounds,
- and shall not in any other case be stamped with an impressed stamp.

123. If any person—

- (1.) Gives any receipt liable to duty and not duly stamped;
  - (2.) In any case where a receipt would be liable to duty refuses to give a receipt duly stamped;
  - (3.) Upon a payment to the amount of two pounds or upwards gives a receipt for a sum not amounting to two pounds, or separates or divides the amount paid with intent to evade the duty,
- he shall forfeit the sum of ten pounds.

#### *As to Settlements.*

124. Where any money which may become due or payable upon any policy of insurance, or upon any security not being a marketable security, is settled or agreed to be settled, the instrument whereby such settlement is made or agreed to be made is to be charged with ad valorem duty in respect of such money:

Provided as follows:

- (1.) Where, in the case of a policy of insurance, no provision is made for keeping up the policy, the ad valorem duty is to be charged only on the value of the policy at the date of the instrument;
- (2.) If in any such case the instrument contains a statement of such value, and is stamped in accordance with such statement, it is, so far as regards such policy, to be deemed duly stamped, unless or until it is shown that such statement is untrue, and that the instrument is in fact insufficiently stamped.

125. (1.) An instrument chargeable with ad valorem duty as a settlement in respect of any money, stock, or security is not to be charged with any further duty by reason of containing provision for the payment or transfer of the same money, stock, or security.

(2.) Where any money, stock, or security is settled or agreed to be settled by a person who has only a reversionary interest therein, and the instrument whereby such settlement is made or agreed to be made contains a covenant by the person entitled in possession to the interest or dividends of such money, stock, or security for

the payment, during the continuance of such possession, of any annuity or yearly sum not exceeding interest at the rate of four pounds per centum per annum upon the amount or value of such money, stock, or security, such instrument shall not be charged with any duty in respect of such covenant.

126. (1.) Where several instruments are executed for effecting the settlement of the same property, and the ad valorem duty chargeable in respect of the settlement of such property exceeds ten shillings, one only of such instruments is to be charged with the ad valorem duty.

(2.) Where a settlement is made in pursuance of any previous agreement or articles upon which any ad valorem settlement duty exceeding ten shillings has been paid in respect of the same property, such settlement is not to be charged with any ad valorem settlement duty.

(3.) In each of the aforesaid cases the instruments not chargeable with ad valorem duty are to be charged with the duty of ten shillings.

*As to Share Warrants.*

127. If a share warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall forfeit the sum of fifty pounds.

*As to transfers of Shares in Cost Book Mines.*

128. (1.) The duty upon a request or authority to the purser or other officer of a mining company conducted on the cost book system to enter or register the transfer of any share or part of a share of the mine, and the duty upon a notice to such purser or officer of any such transfer, may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the request, authority, or notice is written or executed.

(2.) Every person who writes or executes any such request, authority, or notice, not being duly stamped, and every purser or other officer of any such company who in any manner obeys, complies with, or gives effect to any such request, authority, or notice, not being duly stamped, shall forfeit the sum of twenty pounds.

—•••••  
SCHEDULE.

	Duty.
	£ s. d.
ADMISSION in England, Scotland, or Ireland of any person—	
As an advocate in any court	- 50 0 0

*Exemption.*

Where a person has been duly admitted as an advocate in any court in England, Scotland, or Ireland, his admission as an advocate in any other court in the same country is exempt from duty.

And see sections 29 and 30.

ADMISSION in England or Ireland of any person—

To the degree of barrister-at-law.

If he has been previously duly admitted to the said degree in Ireland, or in England, as the case may be - 10 0 0

In any other case - 50 0 0

And see sections 29, 30, and 31.

ADMISSION of any person—

To be a member of either of the four Inns of Court in England, or a student of the Society of King's Inns in Dublin - 25 0 0

*Exemptions.*

(1.) Where a person has been duly admitted a member of one of the Inns of Court in England, his admission as a member of any other of the said Inns is exempt from duty.

(2.) Where a person has been duly admitted a student of the Society of King's Inns in Dublin, his admission as a member of any of the Inns of Court in England is exempt from duty.

And see sections 29, 30, 31, and 32.

ADMISSION of any person—

To be a member of either of the Societies commonly called Inns of Chancery in England - 3 0 0

And see sections 29 and 30.

ADMISSION in England or Ireland of any person—

As an attorney, solicitor, or proctor in any court - 25 0 0

*Exemption.*

Where a person has been duly admitted as an attorney, solicitor, or proctor in any court in England or Ireland, his admission to act in either of those capacities in any other court in the same country is exempt from duty.

And see sections 29 and 30.

	£	s.	d.		£	s.	d.
<b>ADMISSION in Scotland of any person—</b>				<b>ration or company, in any city, borough, or town corporate.</b>			
(1.) As a writer to the signet, or as a solicitor, agent, or attorney in the Court of Session, Justiciary, or Commission of Teinds:				In respect of birth, apprenticeship, or marriage, or, in Ireland, in respect of being engaged in any trade, mystery, or handicraft -	1	0	0
If he has previously paid the sum of 60 <i>l.</i> for duty upon his articles of clerkship -	25	0	0	Upon any other ground -	3	0	0
If he has been previously duly admitted as a procurator or solicitor in any inferior court -	30	0	0	<b>Exemption.</b>			
In any other case -	85	0	0	Admission of any person to the freedom of the city of London by redemption.			
(2.) As a procurator or solicitor in any inferior court:				And see sections 29 and 30.			
If he has previously paid the sum of 2 <i>s.</i> 6 <i>d.</i> for duty on his articles of clerkship -	54	17	6	<b>ADMISSION in Scotland of any person—</b>			
In any other case -	55	0	0	As a burgess, or into any corporation or company, in any burgh	0	5	0
<b>Exemptions.</b>				<b>Exemption.</b>			
(1.) Where a person has been duly admitted as a writer to the signet, or as a solicitor, agent, or attorney in the Court of Session, Justiciary, or Commission of Teinds, his admission to act in either of those capacities in any other of the said courts, or as a procurator or solicitor in any inferior court, is exempt from duty.				Admission of a craftsman or other person into any corporation within any royal burgh, burgh of royalty, or burgh of barony incorporated by the magistrates and council of such burgh, provided such craftsman or other person has been previously duly admitted a freeman or burgess of the burgh.			
(2.) Where a person has been duly admitted as a procurator or solicitor in any inferior court, his admission as a procurator or solicitor in any other inferior court is exempt from duty.				And see sections 29 and 30.			
And see sections 29 and 30.				<b>ADMISSION to ecclesiastical benefices in Scotland.</b>			
<b>ADMISSION to act as a notary public.</b>				See APPOINTMENT, &c. to ecclesiastical benefices.			
See FACULTY.				<b>ADMISSION and APPOINTMENT or GRANT by any writing—</b>			
<b>ADMISSION of any person—</b>				To or of any office or employment—			
As a Fellow of the College of Physicians in England, Scotland, or Ireland -	25	0	0	Where the annual salary, fees, or emoluments appertaining to such office or employment do not exceed 100 <i>l.</i> -	2	0	0
And see sections 29 and 30.				Exceed 100 <i>l.</i> and do not exceed 150 <i>l.</i> -	4	0	0
<b>ADMISSION to the degree of doctor of medicine in either of the universities in Scotland -</b>	10	0	0	" 150 <i>l.</i> " " 200 <i>l.</i> -	6	0	0
And see sections 29 and 30.				" 200 <i>l.</i> " " 250 <i>l.</i> -	8	0	0
<b>ADMISSION in England or Ireland of any person—</b>				" 250 <i>l.</i> " " 300 <i>l.</i> -	10	0	0
As a burgess, or into any corporation or company, in any city, borough, or town corporate.				" 300 <i>l.</i> —			
				for every 100 <i>l.</i> and also for any fractional part of 100 <i>l.</i> -	5	0	0
				<b>Exemptions.</b>			
				(1.) Admission proceeding upon a duly stamped appointment or grant.			
				(2.) First appointment of any person to the office or employment of out-door officer, boatman, waterman, or watchman in the service of the Customs.			



- (3.) Periodical re-admission or re-appointment to any office or employment of any person who has been once duly admitted to such office or employment.

And see sections 29, 30, 33, 34, and 35.

AFFIDAVIT, or STATUTORY DECLARATION made under the provisions of 5 & 6 Will. 4. c. 62. - - -

*Exemptions.*

- (1.) Affidavit made for the immediate purpose of being filed, read, or used in any court, or before any judge, master, or officer of any court.
- (2.) Affidavit or declaration made upon a requisition of the commissioners of any public board of revenue, or any of the officers acting under them, or required by law, and made before any justice of the peace.
- (3.) Affidavit or declaration which may be required at the Bank of England or the Bank of Ireland to prove the death of any proprietor of any stock transferable there, or to identify the person of any such proprietor, or to remove any other impediment to the transfer of any such stock.
- (4.) Affidavit or declaration relating to the loss, mutilation, or defacement of any bank note or bank post bill.
- (5.) Declaration required to be made pursuant to any Act relating to marriages in order to a marriage without licence.

AGREEMENT or CONTRACT, accompanied with a deposit.

See MORTGAGE, &c., and section 105.

AGREEMENT for a lease or tack, or for any letting.

See LEASE or TACK, and section 96.

AGREEMENT or CONTRACT made or entered into pursuant to the Highway Acts for or relating to the making, maintaining, or repairing of highways - - -

AGREEMENT, or any MEMORANDUM of an AGREEMENT, made in Eng-

£ s. d.

0 2 6

0 0 6

land or Ireland under hand only, or made in Scotland without any clause of registration, and not otherwise specifically charged with any duty, whether the same be only evidence of a contract, or obligatory upon the parties from its being a written instrument - - -

£ s. d.

0 0 6

*Exemptions.*

- (1.) Agreement or memorandum the matter whereof is not of the value of 5l.
- (2.) Agreement or memorandum for the hire of any labourer, artificer, manufacturer, or menial servant.
- (3.) Agreement, letter, or memorandum made for or relating to the sale of any goods, wares, or merchandise.
- (4.) Agreement or memorandum made between the master and mariners of any ship or vessel for wages on any voyage coastwise from port to port in the United Kingdom.

And see section 36.

ALLOTMENT. See LETTER or ALLOTMENT.

ANNUITY, conveyance in consideration of.

See CONVEYANCE ON SALE, and section 72.  
purchase of.

See CONVEYANCE ON SALE, and section 75.

creation of, by way of security.

See MORTGAGE, &c., and section 108.

instruments relating to, upon any other occasion.

See BOND, COVENANT, &c.

APPOINTMENT, whether by way of DONATION, PRESENTATION, or NOMINATION, and ADMISSION, COLLATION, or INSTITUTION to or LICENCE to HOLD—

Any ecclesiastical benefice, dignity, or promotion, or any perpetual curacy.

In England.

If the net yearly value thereof exceeds—

50l. and does not exceed 100l.	1	0	0
100l. " " 150l.	2	0	0
150l. " " 200l.	3	0	0
200l. " " 250l.	4	0	0
250l. " " 300l.	5	0	0
300l. - - -	7	0	0

	£	s.	d.
And also (if such yearly value exceeds 300 <i>l.</i> ) for every 100 <i>l.</i> of such yearly value over and above 200 <i>l.</i> a further duty of -	5	0	0
In Scotland - - - -	2	0	0

*Exemptions.*

Admission, collation, institution, or licence proceeding upon a duly stamped donation, presentation, or nomination.

And see section 37.

APPOINTMENT of a new trustee, and APPOINTMENT in execution of a power of any property, or of any use, share, or interest in any property, by any instrument not being a will - - - -

0 10 0

And see section 78.

APPOINTMENT of a gamekeeper.

See DEPUTATION.

APPOINTMENTS to offices or employments.

See ADMISSION.

APPRAISEMENT or VALUATION of any property, or of any interest therein, or of the annual value thereof, or of any dilapidations, or of any repairs wanted, or of the materials and labour used or to be used in any building, or of any artificers work whatsoever.

Where the amount of the appraisalment or valuation does not exceed 5*l.* - - -

0 0 3

Exceeds 5*l.* and does not exceed

	10 <i>l.</i>	0 0 6
" 10 <i>l.</i>	20 <i>l.</i>	0 1 0
" 20 <i>l.</i>	30 <i>l.</i>	0 1 6
" 30 <i>l.</i>	40 <i>l.</i>	0 2 0
" 40 <i>l.</i>	50 <i>l.</i>	0 2 6
" 50 <i>l.</i>	100 <i>l.</i>	0 5 0
" 100 <i>l.</i>	200 <i>l.</i>	0 10 0
" 200 <i>l.</i>	500 <i>l.</i>	0 15 0
" 500 <i>l.</i>	-	1 0 0

*Exemptions.*

(1.) Appraisalment or valuation made for, and for the information of, one party only, and not being in any manner obligatory as between parties either by agreement or operation of law.

(2.) Appraisalment or valuation made in pursuance of the order of any Court of Admiralty or Vice-Admiralty,

or of any Court of Appeal, from any sentence, adjudication, or judgment of any Court of Admiralty or Vice-Admiralty.

(3.) Appraisalment or valuation of any property made for the purpose of ascertaining the legacy or succession duty payable in respect thereof.

And see section 38.

APPRENTICESHIP, instrument of.

Where there is no premium or consideration - - -

0 2 6

In any other case—

For every 5*l.*, and also for any fractional part of 5*l.*, of the amount or value of the premium or consideration -

0 5 0

*Exemptions.*

(1.) Instrument relating to any poor child apprenticed by, or at the sole charge of, any parish or township, or by or at the sole charge of any public charity, or pursuant to any Act for the regulation of parish apprentices.

(2.) Instrument of apprenticeship in Ireland, where the value of the premium or consideration does not exceed 10*l.*

And see sections 39 and 40.

ARTICLES OF CLERKSHIP whereby any person first becomes bound to serve as a clerk in order to his admission.

(1.) As an attorney or solicitor in any of Her Majesty's courts at Westminster or in Ireland, or as a proctor in the High Court of Admiralty, or any Ecclesiastical Court in England or Ireland -

80 0 0

(2.) As an attorney or solicitor in any of the courts of the counties palatine of Lancaster and Durham, or as a writer to the signet, or as a solicitor, agent, or attorney in the Court of Session, Justiciary, or Commission of Teinds in Scotland - - -

60 0 0

(3.) As a procurator or solicitor in any inferior court in Scotland - - -

0 2 6

And see sections 41, 42, 43, and 44.

	£	s.	d.
ARTICLES OF CLERKSHIP, whereby any person, having been before bound by duly stamped articles to serve as a clerk in order to his admission in any of the courts aforesaid, and not having completed his service so as to be entitled to such admission, becomes bound afresh for the same purpose - - -	0	10	0

## ASSIGNMENT OF ASSIGNATION.

By way of security, or of any security. See MORTGAGE, &amp;c.

Upon a sale, or otherwise. See CONVEYANCE.

ASSURANCE OF INSURANCE. See POLICY.

ATTESTED COPY. See COPY.

ATTORNEY, LETTER OF POWER OF. See LETTER OF ATTORNEY. WARRANT of. See WARRANT OF ATTORNEY.

AWARD in England or Ireland, and AWARD or DECREE ARBITRAL in Scotland.

Where the amount or value of the matter in dispute does not exceed 5*l*. - - - 0 0 3Exceeds 5*l*. and does not exceed 10*l*. 0 0 6" 10*l*. " 20*l*. 0 1 0" 20*l*. " 30*l*. 0 1 6" 30*l*. " 40*l*. 0 2 0" 40*l*. " 50*l*. 0 2 6" 50*l*. " 100*l*. 0 5 0" 100*l*. " 200*l*. 0 10 0" 200*l*. " 500*l*. 0 15 0" 500*l*. " 750*l*. 1 0 0" 750*l*. " 1,000*l*. 1 5 0And where it exceeds 1,000*l*., and in any other case not above provided for - - 1 15 0

BACK BOND. See MORTGAGE, &amp;c., and section 105.

## BANK NOTE—

For money not exceeding 1*l*. - 0 0 5Exceeding 1*l*. and not exceeding 2*l*. 0 0 10" 2*l*. " 5*l*. 0 1 3" 5*l*. " 10*l*. 0 1 9" 10*l*. " 20*l*. 0 2 0" 20*l*. " 30*l*. 0 3 0" 30*l*. " 50*l*. 0 5 0" 50*l*. " 100*l*. 0 8 6

And see sections 45, 46, and 47.

## BILL OF EXCHANGE—

Payable on demand - - - 0 0 1

BILL OF EXCHANGE of any other kind whatsoever (*except a Bank Note*) and PROMISSORY NOTE ofany kind whatsoever (*except a Bank Note*)—drawn, or expressed to be payable, or actually paid, or endorsed, or in any manner negotiated in the United Kingdom :Where the amount or value of the money for which the bill or note is drawn or made does not exceed 5*l*. - - 0 0 1Exceeds 5*l*. and does not exceed 10*l*. 0 0 2" 10*l*. " 25*l*. 0 0 3" 25*l*. " 50*l*. 0 0 6" 50*l*. " 75*l*. 0 0 9" 75*l*. " 100*l*. 0 1 0" 100*l*.—for every 100*l*., and also for any fractional part of 100*l*., of such amount or value - 0 1 0

## Exemptions.

(1.) Bill or note issued by the Governor and Company of the Bank of England or Bank of Ireland.

(2.) Draft or order drawn by any banker in the United Kingdom upon any other banker in the United Kingdom, not payable to bearer or to order, and used solely for the purpose of settling or clearing any account between such bankers.

(3.) Letter written by a banker in the United Kingdom to any other banker in the United Kingdom, directing the payment of any sum of money, the same not being payable to bearer or to order, and such letter not being sent or delivered to the person to whom payment is to be made, or to any person on his behalf.

(4.) Letter of credit granted in the United Kingdom authorizing drafts to be drawn out of the United Kingdom payable in the United Kingdom.

(5.) Draft or order drawn by the Accountant General of the Court of Chancery in England or Ireland.

(6.) Warrant or order for the payment of any annuity granted by the Commissioners for the Reduction of the National Debt, or for the

£ s. d.

payment of any dividend or interest on any share in the Government or Parliamentary stocks or funds.

- (7.) Bill drawn by the Lords Commissioners of the Admiralty, or by any person under their authority, under the authority of any Act of Parliament upon and payable by the Accountant General of the Navy.

- (8.) Bill drawn (according to a form prescribed by Her Majesty's orders by any person duly authorized to draw the same) upon and payable out of any public account for any pay or allowance of the army or other expenditure connected therewith.

- (9.) Coupon or warrant for interest attached to and issued with any security.

And see sections 48, 49, 50, 51, 52, 53, 54, and 55.

**BILL OF LADING** of or for any goods, merchandise, or effects to be exported or carried coastwise - - -

0 0 6

And see section 56.

**BILL OF SALE—**

Absolute. See **CONVEYANCE ON SALE.**

By way of security. See **MORTGAGE, &c.**

And see section 57.

**BOND** for securing the payment or repayment of money or the transfer or retransfer of stock.

See **MORTGAGE, &c.**

**BOND** in relation to any annuity upon the original creation and sale thereof.

See **CONVEYANCE ON SALE**, and section 75.

**BOND, COVENANT, or INSTRUMENT** of any kind whatsoever.

- (1.) Being the only or principal or primary security for any annuity (*except upon the original creation thereof by way of sale or security*), or of any sum or sums of money at stated periods, not being interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease or tack.

For a definite and certain period, so that the total amount to be ultimately payable can be ascertained.

The same ad valorem duty as a bond or covenant for such total amount.

For the term of life or any other indefinite period.

£ s. d.

For every 5*l.*, and also for any fractional part of 5*l.* of the annuity or sum periodically payable - - -

0 2 6

- (2.) Being a collateral or auxiliary or additional or substituted security for any of the above-mentioned purposes where the principal or primary instrument is duly stamped.

Where the total amount to be ultimately payable can be ascertained

The same ad valorem duty as a bond or covenant of the same kind for such total amount.

In any other case:

For every 5*l.*, and also for any fractional part of 5*l.* of the annuity or sum periodically payable - - -

0 0 6

**BOND** given pursuant to the directions of any Act of Parliament, or by the directions of the Commissioners of Customs or Inland Revenue, or any of their officers, for or in respect of any of the duties of customs or excise, or for preventing frauds or evasions thereof, or for any other matter or thing relating thereto.

Where the penalty of the bond does not exceed 150*l.* - - -

The same ad valorem duty as a bond for the amount of the penalty.

And in any other case - - -

0 5 0

*Exemption.*

Bond given as aforesaid upon, or with relation to, the receiving or obtaining, or for entitling any person to receive or obtain, any drawback of any duty or duties, or part of any duty or duties, of customs or excise, for or in respect of any goods, wares, or merchandise exported or shipped to be exported from the United Kingdom to any parts beyond the seas, or upon or with relation to the obtaining of any debenture or certificate for entitling any person to receive any such drawback as aforesaid.

And see section 58.

BOND on obtaining letters of administration in England or Ireland, or a confirmation of testament in Scotland - - - - - £ s. d.  
0 5 0

*Exemptions.*

- (1.) Bond given by the widow, child, father, mother, brother or sister, of any common seaman, marine or soldier, slain or dying in the service of Her Majesty, her heirs or successors.
- (2.) Bond given by any person where the estate to be administered does not exceed 100*l.* in value.

BOND of any kind whatsoever not specifically charged with any duty:

Where the amount limited to be recoverable does not exceed 300*l.* - - - - - { The same ad valorem duty as a bond for the amount limited.

In any other case - - - - - 0 10 0

BOND accompanied with a deposit of title deeds, for making a mortgage,

wadset, or other security on any estate or property therein comprised.  
See MORTGAGE, &c., and section 105.

BOND, DECLARATION, or other DEED or WRITING for making redeemable any disposition, assignation, or tack, apparently absolute, but intended only as a security.  
See MORTGAGE, &c., and section 105.

CERTIFICATE to be taken out yearly--

- (1.) By every person admitted or inrolled in England or Ireland as an attorney, solicitor, proctor, or notary public.
- (2.) By every person admitted or inrolled in Scotland as a writer to the signet, solicitor, agent, attorney, procurator, or notary public.
- (3.) By every other legally qualified person who carries on business in England or Ireland as a conveyancer, special pleader, or draftsman in equity, and is obliged by law to take out such a certificate.

If such person practises or carries on his business

In England, within ten miles from the General Post Office in the city of London - - - - - }  
In Scotland, within the city or shire of Edinburgh - - - - - }  
In Ireland, in the City of Dublin, or within three miles therefrom - - - - - }  
In England, Scotland, or Ireland, beyond the above-mentioned limits - - - - - }  
And see sections 59, 60, 61, 62, 63, and 64.

If he has been admitted or inrolled, or has carried on business, for three years or upwards.

If he has not been so long admitted or inrolled, or has not so long carried on business.

9 0 0

4 10 0

6 0 0

3 0 0

CERTIFICATE of any goods, wares, or merchandise, having been duly entered inwards, which shall be entered outwards for exportation at the port of importation, or be removed from thence to any other port for the more convenient exportation thereof, where such certificate is issued for enabling any person to obtain a debenture or certificate entitling him to receive any drawback of any duty or duties of customs, or any part thereof - - - - - £ s. d.  
0 4 0

CERTIFICATE of the registration of a design - - - - - £ s. d.  
5 0 0  
And see section 65.

CHARTER of resignation, or of confirmation, or of novodamus, or upon apprising, or upon a decret of adjudication, or sale of any lands or other heritable subjects in Scotland - - - - - 0 5 0

CHARTER-PARTY, or any agreement or contract for the charter of any ship or vessel, or any memorandum, letter, or other writing, between the captain, master, or owner of any

	£	s.	d.		£	s.	d.	
ship or vessel, and any other person, for or relating to the freight or conveyance of any money, goods, or effects on board of such ship or vessel	0	0	6	CONVEYANCE or TRANSFER on sale, Of any property ( <i>except such stock or debenture stock or funded debt as aforesaid</i> ),				
And see sections 66, 67, and 68.				Where the amount or value of the consideration for the sale does not exceed 5 <i>l</i> .	-	0	0	6
CLARE CONSTAT. See PRECEPT.				Exceeds 5 <i>l</i> ., and does not exceed 10 <i>l</i> .		0	1	0
COLLATION. See APPOINTMENT, &c. to ecclesiastical benefices.				" 10 <i>l</i> . " 15 <i>l</i> .		0	1	6
COMMISSION granted by Her Majesty, her heirs or successors, or by any person or persons duly authorized by her or them, to any officer in the army, or in the corps of Royal Marines	1	10	0	" 15 <i>l</i> . " 20 <i>l</i> .		0	2	0
COMMISSION granted by the Lords Commissioners of the Admiralty to any officer in the navy	0	5	0	" 20 <i>l</i> . " 25 <i>l</i> .		0	2	6
COMMISSION or DEPUTATION granted by the Commissioners of Inland Revenue	1	10	0	" 25 <i>l</i> . " 50 <i>l</i> .		0	5	0
COMMISSION OF LUNACY	0	5	0	" 50 <i>l</i> . " 75 <i>l</i> .		0	7	6
COMMISSION to act as a notary public in Scotland. See FACULTY.				" 75 <i>l</i> . " 100 <i>l</i> .		0	10	0
COMMISSION in the nature of a power of attorney in Scotland. See LETTER OR POWER OF ATTORNEY.				" 100 <i>l</i> . " 125 <i>l</i> .		0	12	6
CONDITIONAL SURRENDER of any copyhold or customary estate by way of mortgage.				" 125 <i>l</i> . " 150 <i>l</i> .		0	15	0
See MORTGAGE, &c., and sections 105 and 110.				" 150 <i>l</i> . " 175 <i>l</i> .		0	17	6
CONGÉ D'ÉLIRE. See GRANT.				" 175 <i>l</i> . " 200 <i>l</i> .		1	0	0
CONSTAT of Letters Patent. See EXEMPLIFICATION.				" 200 <i>l</i> . " 225 <i>l</i> .		1	2	6
CONTRACT. See AGREEMENT.				" 225 <i>l</i> . " 250 <i>l</i> .		1	5	0
CONTRACT NOTE—Any note, memorandum, or writing, commonly called a "contract note," or by whatever name the same may be designated, for or relating to the sale or purchase of any stock or marketable security of the value of 5 <i>l</i> . or upwards	0	0	1	" 250 <i>l</i> . " 275 <i>l</i> .		1	7	6
And see section 69.				" 275 <i>l</i> . " 300 <i>l</i> .		1	10	0
CONVEYANCE OF TRANSFER, whether on sale or otherwise,—				" 300 <i>l</i> .—				
(1.) Of any stock of the governor and company of the Bank of England	0	7	9	for every 50 <i>l</i> ., and also for any fractional part of 50 <i>l</i> ., of such amount or value	-	0	5	0
(2.) Of any stock of the East India Company	1	10	0	And see sections 70, 71, 72, 73, 74, 75, 76, and 77.				
(3.) Of any debenture stock or funded debt of any company or corporation.				CONVEYANCE OF TRANSFER by way of security of any property ( <i>except such stock or debenture stock or funded debt as aforesaid</i> ), or of any security.				
For every 100 <i>l</i> ., and also for any fractional part of 100 <i>l</i> ., of the nominal amount transferred	0	2	6	See MORTGAGE, &c.				
And see section 78.				CONVEYANCE OF TRANSFER of any kind not herein-before described	-	0	10	0
				And see section 78.				
				COPY or EXTRACT ( <i>attested or in any manner authenticated</i> ) of or from—				
				(1.) An instrument chargeable with any duty.				
				(2.) An original will, testament, or codicil.				
				(3.) The probate or probate copy of a will or codicil.				
				(4.) Any letters of administration or any confirmation of a testament.				
				(5.) Any public register ( <i>except any register of births, baptism, marriages, deaths, or burials</i> ).				
				(6.) The books, rolls, or records of any court.				
				In the case of an instrument chargeable with any duty not amounting to one shilling				
				In any other case	-	0	1	0
				The same duty as such instrument.				

*Exemptions.*

£ s. d.

- (1.) Copy or extract of or from any law proceedings.
- (2.) Copy or extract in Scotland of or from the commission of any person as a delegate or representative to the convention of royal burghs or the general assembly or any presbytery or church court.

And see section 79.

COPY or EXTRACT (*certified*) of or from any register of births, baptisms, marriages, deaths, or burials

0 0 1

*Exemptions.*

- (1.) Copy or extract furnished by any clergyman, registrar, or other official person pursuant to and for the purposes of any Act of Parliament, or furnished to any general or superintending registrar under any general regulation.
- (2.) Copy or extract for which the person giving the same is not entitled to any fee or reward.

And see section 80.

COPYHOLD and CUSTOMARY ESTATES—Instruments relating thereto.

Upon a sale thereof. See CONVEYANCE ON SALE.

Upon a mortgage thereof. See MORTGAGE, &c.

Upon a demise thereof. See LEASE or TACK.

Upon any other occasion.

Surrender or grant made out of court, or the memorandum thereof, and copy of court roll of any surrender or grant made in court

0 10 0

And see sections 81, 82, 83, 84, 85, and 86.

COST BOOK MINES. See TRANSFER.

COUNTERPART. See DUPLICATE.

COVENANT for securing the payment or repayment of money, or the transfer or retransfer of stock.

See MORTGAGE, &amp;c.

COVENANT in relation to any annuity upon the original creation and sale thereof.

See CONVEYANCE ON SALE, and section 75.

COVENANT in relation to any annuity (*except upon the original creation and*

*sale thereof*) or to other periodical payments.

See BOND, COVENANT, &amp;c.

COVENANT. Any separate deed of covenant (*not being an instrument chargeable with ad valorem duty as a conveyance on sale or mortgage*) made on the sale or mortgage of any property, and relating solely to the conveyance or enjoyment of, or the title to, the property sold or mortgaged, or to the production of the muniments of title relating thereto, or to all or any of the matters aforesaid.

Where the ad valorem duty in respect of the consideration or mortgage money does not exceed 10s. - - - } A duty equal to the amount of such ad valorem duty.

In any other case - - - 0 10 0

CURACY (*Perpetual*), licence to hold.

Nomination to. See APPOINTMENT, &c. to ecclesiastical benefices.

CUSTOMARY ESTATES. See COPYHOLD.

DEBENTURE for securing the payment or repayment of money or the transfer or retransfer of stock.

See MORTGAGE, &amp;c.

DEBENTURE or CERTIFICATE for entitling any person to receive any drawback of any duty or duties, or part of any duty or duties, of customs or excise, or any bounty payable out of the revenue of customs or excise, for or in respect of any goods, wares, or merchandise exported or shipped to be exported from any part of the United Kingdom to any part beyond the sea.

Where the drawback or bounty to be received does not exceed 10l. - - -

0 1 0

Exceeds 10l. and does not exceed 50l. - - -

0 2 6

Exceeds 50l. - - -

0 5 0

DECLARATION of any use or trust of or concerning any property by any writing, not being a deed or will, or an instrument chargeable with ad valorem duty as a settlement -

0 10 0

DECLARATION (*Statutory*). See AFFIDAVIT.

DECREET ARBITRAL. See AWARD.

DEED whereby any real burden is declared or created on lands or heritable subjects in Scotland.

See MORTGAGE, &c., and section 105.

	£	s.	d.		£	s.	d.
DEED containing an obligation to infest any person in heritable subjects in Scotland, under a clause of reversion, as a security for money. See MORTGAGE, &c., and section 105.				DOCKET made on passing any instrument under the Great Seal of the United Kingdom - - -	0	2	0
DEED containing an obligation to infest or seize in an annuity to be uplifted out of heritable subjects in Scotland. See BOND, COVENANT, &c.				DONATION of any ecclesiastical benefice, dignity, or promotion. See APPOINTMENT, &c. to ecclesiastical benefices.			
DEED of any kind whatsoever, not described in this schedule - -	0	10	0	DRAFT for money. See BILL of EXCHANGE, and section 48.			
DEFEAZANCE. Deed or other instrument of defeazance of any conveyance, disposition, assignation, or tack, apparently absolute, but intended only as a security for money or stock. See MORTGAGE, &c., and section 105.				DUPLICATE or COUNTERPART of any instrument chargeable with any duty.			
DELIVERY ORDER - - -	0	0	1	Where such duty does not amount to 5s. - - -			The same duty as the original instrument.
And see sections 87, 89, 90, and 91.				In any other case - - -		0	
DEPOSIT of title deeds. See MORTGAGE, &c., and section 105.				And see section 93.		5	0
DEPUTATION by the Commissioners of Inland Revenue. See COMMISSION.				ECCLESIASTICAL BENEFICE. See APPOINTMENT, &c. to ecclesiastical benefices.			
DEPUTATION or APPOINTMENT of a gamekeeper - - -	0	10	0	EIK to a reversion. See MORTGAGE, &c., and section 105.			
DISPENSATION. See FACULTY.				EXCHANGE or EXCAMBION—Instruments effecting. •			
DISPOSITION of heritable property in Scotland to singular successors or purchasers. See CONVEYANCE ON SALE.				In the case specified in section 94 see that section.			
DISPOSITION of heritable property in Scotland to a purchaser, containing a clause declaring all or any part of the purchase money a real burden upon, or affecting, the heritable property thereby disposed, or any part thereof. See CONVEYANCE ON SALE, MORTGAGE, &c., and section 105.				In any other case - - -		0	10
DISPOSITION in Scotland containing constitution of feu or ground annual right. See CONVEYANCE ON SALE, and section 72.				EXEMPLIFICATION or CONSTAT, under the Great Seal of the United Kingdom of Great Britain and Ireland, of any letters patent or grant made or to be made by Her Majesty, her heirs or successors, or by any of her royal predecessors, of any honour, dignity, promotion, franchise, liberty, or privilege, or of any lands, office, or other thing whatsoever - - -		5	0
DISPOSITION in security in Scotland. See MORTGAGE, &c.				EXEMPLIFICATION under the seal of any court in England or Ireland of any record or proceeding therein -		3	0
DISPOSITION of any wadset, heritable bond, &c. See MORTGAGE, &c.				EXTRACT. See COPY or EXTRACT.			
DISPOSITION in Scotland of any property or of any right or interest therein not described in this schedule - - -	0	10	0	FACTORY, in the nature of a letter or power of attorney in Scotland. See LETTER or POWER of ATTORNEY.			
DOCK WARRANT. See WARRANT FOR GOODS.				FACULTY, LICENCE, COMMISSION, or DISPENSATION for admitting or authorizing any person to act as a notary public:			
				In England - - -		30	0
				In Scotland or Ireland - -		20	0
				FACULTY or DISPENSATION of any other kind:			
				In England - - -		30	0
				In Ireland - - -		25	0
				FEU CONTRACT in Scotland. See CONVEYANCE ON SALE, and section 72.			



FOREIGN SECURITY. See MORTGAGE, &c., and sections 113, 114, and 115.

FURTHER CHARGE OR FURTHER SECURITY. See MORTGAGE, &c., and section 109.

GRANT OF LETTERS PATENT under the Great Seal of the United Kingdom of Great Britain and Ireland, or of the Great Seal of Ireland, or the Seal of the Duchy or County Palatine of Lancaster, or under the Seal kept and used in Scotland in place of the Great Seal formerly used there:

- |   |     |   |   |
|---|-----|---|---|
| (1.) Of the honour or dignity   |     |   |   |
| "    "    of a duke   | 350 | 0 | 0 |
| "    "    of a marquis  | 300 | 0 | 0 |
| "    "    of an earl  | 250 | 0 | 0 |
| "    "    of a viscount   | 200 | 0 | 0 |
| "    "    of a baron  | 150 | 0 | 0 |
| "    "    of a baronet  | 100 | 0 | 0 |
| (2.) Of a congé d'élire to any dean and chapter for the election of an archbishop or bishop   |     |   |   |
| (3.) Of the Royal Assent to, or signification of, the election made by any dean and chapter, or of the nomination and presentation by Her Majesty, her heirs or successors, in default of such election of any person to be an archbishop or bishop | 30  | 0 | 0 |
| (4.) Of or for the restitution of the temporalities to any archbishop or bishop   |     |   |   |
| (5.) Of any other honour, dignity, or promotion whatsoever  |     |   |   |
| (6.) Of any franchise, liberty, or privilege to any person or body politic or corporate   |     |   |   |

#### Exemptions.

- (1.) Commissions of rebellion in process.
- (2.) Letters patent or briefs for collecting charitable benevolences.
- (3.) Letters patent for confirming any dispensation hereinbefore charged with duty.
- (4.) Letters patent appointing sheriffs in England or Ireland, and the writs of assistance accompanying such letters patent.

And see section 95.

VOL. XLVIII. LAW JOUR. STAT.

£ s. d.

£ s. d.

GRANT OF WARRANT OF PRESENCE to take rank among nobility, under the sign manual of Her Majesty, her heirs or successors

100 0 0

GRANT OF LICENCE under the sign manual to take and use a surname and arms, or a surname only.

In compliance with the injunctions of any will or settlement

50 0 0

Upon any voluntary application

10 0 0

GRANT of arms or armorial ensigns only, under the sign manual, or by any of the Kings of Arms of England, Scotland, or Ireland

10 0 0

GRANT of copyhold or customary estates. See CONVEYANCE—COPYHOLD.

GRANT of the custody of the person or estate of any lunatic

2 0 0

HERITABLE BOND. See MORTGAGE, &c., and section 105.

INSTITUTION. See APPOINTMENT, &c. to ecclesiastical benefices.

INVENTORY. See SCHEDULE.

LEASE OR TAKE—

- (1.) For any definite term less than a year:

(a.) Of any dwelling-house or tenement, or part of a dwelling house or tenement, at a rent not exceeding the rate of 10*l.* per annum

0 0 1

(b.) Of any furnished dwelling-house or apartments where the rent for such term exceeds 25*l.*

0 2 6

(c.) Of any lands, tenements, or heritable subjects except or otherwise than as aforesaid

These same duty as a lease for a year at the rent reserved for the definite term.

- (2.) For any other definite term or for any indefinite term:

Of any lands, tenements, or heritable subjects—

Where the consideration, or any part of the consideration, moving either to the lessor or to any other person, consists of any money, stock, or security:

In respect of such consideration

These same duty as a conveyance on a sale for the same consideration.

Where the consideration or any part of the consideration is any rent:

In respect of such consideration: If the rent, whether reserved as a yearly rent or otherwise, is at a rate or average rate:

P F

		If the term is definite, and does not exceed 35 years, or is indefinite.	If the term being definite exceeds 35 years, but does not exceed 100 years.	If the term being definite exceeds 100 years.
		£ s. d.	£ s. d.	£ s. d.
Not exceeding 5 <i>l.</i> per annum	- -	0 0 6	0 3 0	0 6 0
Exceeding—				
5 <i>l.</i> and not exceeding 10 <i>l.</i>	- -	0 1 0	0 6 0	0 12 0
10 <i>l.</i> " " 15 <i>l.</i>	- -	0 1 6	0 9 0	0 18 0
15 <i>l.</i> " " 20 <i>l.</i>	- -	0 2 0	0 12 0	1 4 0
20 <i>l.</i> " " 25 <i>l.</i>	- -	0 2 6	0 15 0	1 10 0
25 <i>l.</i> " " 50 <i>l.</i>	- -	0 5 0	1 10 0	3 0 0
50 <i>l.</i> " " 75 <i>l.</i>	- -	0 7 6	2 5 0	4 10 0
75 <i>l.</i> " " 100 <i>l.</i>	- -	0 10 0	3 0 0	6 0 0
100 <i>l.</i>				
For every full sum of 50 <i>l.</i> , and also for any fractional part of 50 <i>l.</i> thereof	- -	0 5 0	1 10 0	3 0 0
	£ s. d.			
(3.) Of any other kind whatsoever not herein-before described	0 10 0	(3.) Denoting, or intended to denote, the right of any per- son as a subscriber in respect of any loan raised or pro- posed to be raised by any company or proposed com- pany, or by any municipal body or corporation	£ s. d. 0 0 1	
And see sections 96, 97, 98, 99, and 100.		(4.) Issued or delivered in the United Kingdom, and de- noting, or intended to de- note, the right of any person as a subscriber in respect of any loan raised or proposed to be raised by or on behalf of any foreign or colonial state, government, municipal body, corporation, or company		
LETTER OF ALLOTMENT OF LETTER OF RENUNCIATION, or any other document having the effect of a letter of allotment:		And see section 101.		
(1.) Of any share of any company or proposed company	-	LETTER OR POWER OF ATTORNEY, OR COMMISSION, FACTORY, MAN- DATE, or other instrument in the nature thereof:		
(2.) In respect of any loan raised, or proposed to be raised, by any company or proposed company, or by any munici- pal body or corporation	-	(1.) For the sole purpose of ap- pointing or authorizing any one person to vote as a proxy at any one meeting at which votes may be given by proxy	0 0 1	
(3.) Issued or delivered in the United Kingdom, of any share of any foreign or col- onial company or proposed company, or in respect of any loan raised or proposed to be raised by or on behalf of any foreign or colonial state, government, municipal body, corporation, or com- pany	0 0 1	(2.) By any petty officer, seaman, marine or soldier serving as a marine, or by the executors or administrators of any such person, for receiving prize money or wages	0 1 0	
And SCRIP CERTIFICATE, SCRIP, or other document:		(3.) For the receipt of the divi- dends or interest of any stock:		
(1.) Entitling any person to be- come the proprietor of any share of any company or proposed company	-	Where made for the re- ceipt of one payment only	0 1 0	
(2.) Issued or delivered in the United Kingdom, and en- titling any person to become the proprietor of any share of any foreign or colonial company or proposed com- pany	-	In any other case	0 5 0	

	£	s.	d.
(4.) For the receipt of any sum of money, or any bill of exchange or promissory note for any sum of money, not exceeding 20 <i>l.</i> , or any periodical payments not exceeding the annual sum of 10 <i>l.</i> ( <i>not being herein-before charged</i> ) - - - -	0	5	0
(5.) For the sale, transfer, or acceptance of any of the Government or Parliamentary stocks or funds: Where the value of such stocks or funds does not exceed 20 <i>l.</i> - - -	0	5	0
In any other case - - -	0	10	0
(6.) Of any kind whatsoever not herein-before described - -	0	10	0

*Exemptions.*

- (1.) Letter or power of attorney for the receipt of dividends of any definite and certain share of the Government or Parliamentary stocks or funds producing a yearly dividend of less than 3*l.*
- (2.) Letter or power of attorney or proxy filed in the Court of Probate in England or Ireland, or in any ecclesiastical court.
- (3.) Letter or power of attorney for voting on any election of directors of the East India Company.

And see sections 102, 103, and 104.

LETTERS OF MARQUE AND REPRISAL - - - - 5 0 0

LETTERS PATENT. See GRANT.

LETTER OF REVERSION in Scotland.  
See MORTGAGE, &c., and section 105.

LICENCE for Marriage.

Special—

In England or Ireland - 5 0 0

Not special—

In England - - - 0 10 0

LICENCE under the seal of any archbishop, bishop, chancellor, or other ordinary, or by any ecclesiastical court in England or Ireland, or by any presbytery or other ecclesiastical power in Scotland:

- (1.) To hold the office of lecturer, reader, chaplain, church clerk, chapel clerk, parish clerk, or sexton -

	£	s.	d.
(2.) For licensing a building for the performance of divine service within an ecclesiastical district formed under the provisions of The New Parishes Act - - -			
(3.) For licensing any chapel for the solemnization of marriages therein, pursuant to the provisions of the Act 6 & 7 Will. 4. c. 85. - - - -	0	10	0
(4.) For licensing or authorising any matter relating to a consecrated building or ground, or anything to be constructed, set up, taken down, or altered therein, or to be removed therefrom - - -			
(5.) For any other purpose ( <i>except a licence to hold a perpetual curacy</i> ) - - - -	2	0	0

*Exemptions.*

- (1.) Licence granted to any spiritual person to perform divine service in any building approved by the archbishop or bishop in lieu of any church or chapel whilst the same is under repair or is rebuilding, or in any building so approved for the convenience of the inhabitants of a parish resident at a distance from the church or consecrated chapel.
- (2.) Licence to a stipendiary curate, wherein the annual amount of the stipend is specified.
- (3.) Licence for the purpose of authorising or enabling any person to preach or exercise any other spiritual function, not being a licence to hold the office of lecturer, reader, or chaplain, and there being no salary or emolument for or attached to the exercise of the function for which such licence is granted.

LICENCE to act as a notary public.

See FACULTY.

LICENCE to use surname or arms.

See GRANT.

MARRIAGE CONTRACT. See SETTLEMENT.

	£	s.	d.
MARRIAGE LICENCE. <i>See</i> LICENCE.			
MEMORIAL to be registered pursuant to any Act of Parliament, made or to be made, for the public registering of deeds and conveyances in England or Ireland :			
Where the instrument registered is chargeable with any duty not amounting to 2s. 6d.	The same duty as the registered instrument.		
In any other case		0	2 6

MORTGAGE, BOND, DEBENTURE, COVENANT, WARRANT OF ATTORNEY to confess and enter up judgment, and FOREIGN SECURITY of any kind.

(1.) Being the only or principal or primary security for—			
The payment or repayment of money not exceeding 25l.		0	0 8
Exceeding 25l. and not exceeding 50l.		0	1 3
„ 50l. „ 100l.		0	2 6
„ 100l. „ 150l.		0	3 9
„ 150l. „ 200l.		0	5 0
„ 200l. „ 250l.		0	6 3
„ 250l. „ 300l.		0	7 6
„ 300l.			
For every 100l., and also for any fractional part of 100l., of such amount		0	2 6
(2.) Being a collateral, or auxiliary, or additional, or substituted security, or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped :			
For every 100l., and also for any fractional part of 100l., of the amount secured		0	0 6
(3.) TRANSFER, ASSIGNMENT, DISPOSITION, or ASSIGNATION of any mortgage, bond, debenture, covenant, or foreign security, or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment :			
For every 100l., and also for any fractional part of 100l., of the amount transferred, assigned, or disposed		0	0 6

And also where any further money is added to the money already secured -

The same duty as a principal security for such further money.

(4.) RECONVEYANCE, RELEASE, DISCHARGE, SURRENDER, RESURRENDER, WARRANT TO VACATE, or RENUNCIATION of any such security as aforesaid, or of the benefit thereof, or of the money thereby secured :

For every 100l., and also for any fractional part of 100l., of the total amount or value of the money at any time secured - 0 0 6

And *see* sections 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, and 115.

MUTUAL DISPOSITION or CONVEYANCE in Scotland. *See* EXCHANGE or EXCAMBION.

NOTARIAL ACT of any kind whatsoever (*except a protest of a bill of exchange or promissory note, or any notarial instrument to be expedited and recorded in any register of sasines*) - 0 1 0

And *see* PROTEST, SEIZIN, and section 116.

ORDER for the payment of money. *See* BILL of EXCHANGE and section 48.

PARTITION or DIVISION — Instruments effecting.

In the case specified in section 94, *see* that section.

In any other case - 0 10 0

PASSPORT - 0 0 6

PERPETUAL CURACY. *See* APPOINTMENT, &c. to Ecclesiastical Benefices.

POLICY of INSURANCE—

(1.) Upon any life or lives, or upon any event or contingency relating to or depending upon any life or lives (*except for the payment of money upon the death of any person only from accident or violence, or otherwise than from a natural cause*):

Where the sum insured does not exceed 10l. - 0 0 1

	£	s.	d.
Exceeds 10 <i>l.</i> but does not exceed 25 <i>l.</i> -	0	0	3
Exceeds 25 <i>l.</i> but does not exceed 500 <i>l.</i> :			
For every full sum of 50 <i>l.</i> , and also for any fractional part of 50 <i>l.</i> , of the amount insured	0	0	6
Exceeds 500 <i>l.</i> but does not exceed 1,000 <i>l.</i> :			
For every full sum of 100 <i>l.</i> , and also for any fractional part of 100 <i>l.</i> , of the amount insured	0	1	0
Exceeds 1,000 <i>l.</i> :			
For every full sum of 1,000 <i>l.</i> , and also for any fractional part of 1,000 <i>l.</i> , of the amount insured	0	10	0
(2.) For any payment agreed to be made upon the death of any person, only from accident or violence, or otherwise than from a natural cause, or as compensation for personal injury, or by way of indemnity against loss or damage of or to any property -	0	0	1
And see sections 117, 118, and 119.			
POWER OF ATTORNEY. See LETTER OF ATTORNEY.			
PRECEPT OF CLARE CONSTAT to give seisin of lands or other heritable subjects in Scotland -	0	5	0
PRESENTATION to any ecclesiastical benefice, dignity, or promotion. See APPOINTMENT, &c. to Ecclesiastical Benefices.			
PROCURATION, deed, or other instrument of -	0	10	0
PROMISSORY NOTE. See BANK NOTE, BILL OF EXCHANGE, and section 49.			
PROTEST of any bill of exchange or promissory note :			
Where the duty on the bill or note does not exceed 1 <i>s.</i> -	{ The same duty as the bill or note.		
In any other case -	0	1	0
And see section 116.			
PROXY. See LETTER OR POWER OF ATTORNEY.			
RECEIPT given for, or upon the payment of, money amounting to 2 <i>l.</i> or upwards -	0	0	1

## Exemptions.

- |  | £ | s. | d. |
|--|---|----|----|
| (1.) Receipt given for money deposited in any bank, or with any banker, to be accounted for and expressed to be received of the person to whom the same is to be accounted for.  |   |    |    |
| (2.) Acknowledgment by any banker of the receipt of any bill of exchange or promissory note for the purpose of being presented for acceptance or payment.  |   |    |    |
| (3.) Receipt given for or upon the payment of any parliamentary taxes or duties, or of money to or for the use of Her Majesty.   |   |    |    |
| (4.) Receipt given by the Accountant General of the Navy for any money received by him for the service of the navy.  |   |    |    |
| (5.) Receipt given by any agent for money imprested to him on account of the pay of the army.  |   |    |    |
| (6.) Receipt given by any officer, seaman, marine or soldier, or his representatives, for or on account of any wages, pay or pension, due from the Admiralty or Army Pay Office.   |   |    |    |
| (7.) Receipt given for the consideration money for the purchase of any share in any of the Government or Parliamentary stocks or funds, or in stock of the East India Company, or in the stocks and funds of the Secretary of State in Council of India, or of the governor and company of the Bank of England, or of the Bank of Ireland, or for any dividend paid on any share of the said stocks or funds respectively. |   |    |    |
| (8.) Receipt given for any principal money or interest due on an exchequer bill.   |   |    |    |
| (9.) Receipt written upon a bill of exchange or promissory note duly stamped.  |   |    |    |
| (10.) Receipt given upon any bill or note of the governor and company of the Bank of England or the Bank of Ireland.   |   |    |    |

	£	s.	d.		£	s.	d.
(11.) Receipt indorsed or otherwise written upon or contained in any instrument liable to stamp duty, and duly stamped, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest, or annuity thereby secured or therein mentioned.				be used or given in evidence as part of, or as material to, any other instrument charged with any duty, but which is separate and distinct from, and not indorsed on or annexed to, such other instrument :			
				Where such other instrument is chargeable with any duty not exceeding 10s.			The same duty as such other instrument.
				In any other case			0 10 0
(12.) Receipt given for drawback or bounty upon the exportation of any goods or merchandise from the United Kingdom.				<i>Exemptions.</i>			
(13.) Receipt given for the return of any duties of customs upon certificates of over entry.				(1.) Printed proposals published by any corporation or company respecting insurances, and referred to in or by any policy of insurance issued by such corporation or company.			
(14.) Receipt indorsed upon any bill drawn by the Lords Commissioners of the Admiralty, or by any person under their authority, or under the authority of any Act of Parliament upon and payable by the Accountant General of the Navy.				(2.) Any public map, plan, survey, apportionment, allotment, award, and other parochial or public document and writing, made under or in pursuance of any Act of Parliament, and deposited or kept for reference in any registry, or in any public office, or with the public books, papers, or writings of any parish.			
And see sections 120, 121, 122, and 123.				SCRIP CERTIFICATE or SCRIP. See LETTER OF ALLOTMENT.			
RECONVEYANCE, RELEASE, or RENUNCIATION of any security. See MORTGAGE, &c.				SEISIN. Instrument of seisin given upon any charter, precept of clare constat, or precept from chancery, or upon any wadset, heritable bond, disposition, apprizing, adjudication or otherwise of any lands or heritable subjects in Scotland not of			0 5 0
RELEASE or RENUNCIATION of any property, or of any right or interest in any property—				And any NOTARIAL INSTRUMENT to be expedited and recorded in any register of sasines			0 5 0
Upon a sale. See CONVEYANCE ON SALE.				SETTLEMENT. Any instrument, whether voluntary or upon any good or valuable consideration, other than a bonâ fide pecuniary consideration, whereby any definite and certain principal sum of money (whether charged or chargeable on lands or other hereditaments or heritable subjects, or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not), or any definite and certain amount of stock, or any security, is settled or agreed to be settled in any manner whatsoever :			
By way of security. See MORTGAGE, &c.							
In any other case			0 10 0				
RENUNCIATION. See RECONVEYANCE and RELEASE.							
RESIGNATION. Principal or original instrument of resignation, or service of cognition of heirs, or charter or seisin of any houses, lands, or other heritable subjects in Scotland holding burgage, or of burgage tenure			0 5 0				
And instrument of resignation of any lands or other heritable subjects in Scotland not of burgage tenure			0 5 0				
REVOCATION of any use or trust of any property by deed, or by any writing, not being a will			0 10 0				
SCHEDULE, INVENTORY, or document of any kind whatsoever, referred to in or by, and intended to							

	£	s.	d.		£	s.	d.
For every 100 <i>l.</i> , and also for any fractional part of 100 <i>l.</i> , of the amount or value of the property settled or agreed to be settled - - -	0	5	0	WARRANT OF ATTORNEY of any other kind - - -	0	10	0
				WARRANT FOR GOODS - - -	0	0	3
<i>Exemption.</i>				<i>Exemptions.</i>			
Instrument of appointment relating to any property in favour of persons specially named or described as the objects of a power of appointment, created by a previous settlement stamped with ad valorem duty in respect of the same property, or by will, where probate duty has been paid in respect of the same property as personal estate of the testator.				(1.) Any document or writing given by any inland carrier acknowledging the receipt of goods conveyed by such carrier.			
And see sections 124, 125, and 126.				(2.) A weight note issued together with a duly stamped warrant, and relating solely to the same goods, wares, or merchandise.			
SHARE WARRANT issued under the provisions of "The Companies Act, 1867."				And see sections 88, 89, and 92.			
See section 33 of that Act, CONVEYANCE ON SALE, and section 127 of this Act.				WARRANT under the sign manual of Her Majesty, her heirs or successors WRIT—	0	10	0
SURRENDER—				(1.) Of ACKNOWLEDGMENT under "The Registration of Leases (Scotland) Act" - - -			
Of copyholds. See COPYHOLD.				(2.) Of ACKNOWLEDGMENT by any person infest of lands in Scotland in favour of the heir or donee of a creditor fully vested in right of an heritable security constituted by infestment - - -	0	5	0
Of any other kind whatsoever not chargeable with duty as a conveyance on sale or mortgage -	0	10	0	(3.) Of RESIGNATION, CONFIRMATION, CLARE CONSTAT, or INVESTITURE under "The Titles to Land Consolidation (Scotland) Act, 1868" -			
TACK of lands, &c. in Scotland. See LEASE or TACK.							
TACK IN SECURITY. See MORTGAGE, &c.							
TRANSFER. See CONVEYANCE or TRANSFER.							
TRANSFER. Any request or authority to the purser or other officer of any mining company, conducted on the cost book system, to enter or register any transfer of any share, or part of a share, in any mine, or any notice to such purser or officer of any such transfer - - -	0	0	6				
And see section 128.							
VALUATION. See APPRAISEMENT.							
VOTING PAPER. Any instrument for the purpose of voting by any person entitled to vote at any meeting - - -	0	0	1				
And see section 102.							
WADSET. See MORTGAGE, &c.							
WARRANT OF ATTORNEY to confess and enter up a judgment given as a security for the payment or repayment of money, or for the transfer or retransfer of stock.							
See MORTGAGE, &c.							
				GENERAL EXEMPTIONS FROM ALL STAMP DUTIES.			
				(1.) Transfers of shares in the Government or Parliamentary stocks or funds.			
				(2.) Instruments for the sale, transfer, or other disposition, either absolutely or by way of mortgage, or otherwise, of any ship or vessel, or any part, interest, share, or property of or in any ship or vessel.			
				(3.) Instruments of apprenticeship, bonds, contracts, and agreements entered into in the United Kingdom for or relating to the service in any of Her Majesty's colonies or possessions abroad of any person as an artificer, clerk, domestic servant, handicraftsman, mechanic, gardener, servant in husbandry, or labourer.			
				(4.) Testaments, testamentary instruments, and dispositions mortis causa in Scotland.			

- |   |         |   |
|---|---------|---|
| <p>(5.) Bonds given to sheriffs or other persons upon the replevy of any goods or chattels, and assignments of such bonds.</p> <p>(6.) Commissions granted to officers of militia, yeomanry, or volunteers.</p> | £ s. d. | <p>(7.) Instruments made by, to, or with the Commissioners, or the First Commissioner, of Her Majesty's Works and Public Buildings, for any of the purposes of the Act 15 and 16 Vict. c. 28.</p> |
|---|---------|---|

## CHAP. 98.

*The Stamp Duties Management Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title and commencement of Act.*
2. *Interpretation of terms.*
3. *Duties to be managed by the Commissioners.*
4. *Former references to stamp duties to apply to this Act.*
5. *As to licences to deal in stamps.*
6. *As to the contents and effect of a licence.*
7. *Penalty for unauthorized dealing in stamps, 20l., and in the case of a forged stamp, 40l. Proviso.*
8. *How licence to be notified. Penalty 10l.*
9. *Penalty on unauthorized persons holding themselves out as dealers in stamps, 10l.*
10. *Provisions as to the determination of a licence.*
11. *Penalty for hawkng stamps, 20l. Mode of proceeding.*
12. *Postage stamps.*
13. *Discount.*
14. *Allowance for spoiled stamps.*
15. *Allowance for misused stamps.*
16. *Allowance how to be made.*
17. *Stamps not wanted may be repurchased by the Commissioners.*
18. *Criminal offences relating to stamps.*
19. *Proceedings for the detection of forged dies, &c.*
20. *Further proceedings for the detection of forged stamps. Penalty for resisting, obstructing, or refusing to assist, 50l.*
21. *Mode of proceeding when stamps are seized.*
22. *Licensed person in possession of forged stamps to be presumed guilty until contrary is shown.*
23. *Proceedings for the detection of stamps stolen or obtained fraudulently.*
24. *As to the discontinuance of dies.*
25. *As to defacement of adhesive stamps.*
26. *Recovery of penalties.*
27. *Affidavits and declarations, how to be made.*

An Act for consolidating and amending the Law relating to the Management of Stamp Duties.

(10th August 1870.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; that it is say,

1. This Act may be cited as "The Stamp Duties Management Act, 1870," and shall come into operation on the first day of January 1871.

2. In the construction and for the purposes of this Act the following words and terms have the meanings hereby assigned to them, unless it is otherwise provided, or there be something in the context repugnant thereto:

(1.) "The Commissioners" means the Commissioners of Inland Revenue:



- (2.) "The chief office" means the chief office of Inland Revenue:
- (3.) "Head offices" means the head offices of Inland Revenue in Edinburgh and Dublin:
- (4.) "Duty," "duties," mean the stamp duty and stamp duties from time to time chargeable by law:
- (5.) "Material" means and includes every sort of material upon which words or figures can be expressed:
- (6.) "Write," "written," and "writing," include every mode in which words or figures can be expressed upon material:
- (7.) "Instrument" means and includes every written document:
- (8.) "Die" means and includes any plate, type, tool, or implement whatever used under the direction of the Commissioners for expressing or denoting any duty, or the fact that any duty or penalty has been paid, or that an instrument is duly stamped, or is not chargeable with any duty, and also any part of any such plate, type, tool, or implement:
- (9.) "Forge," "forged," mean and include counterfeit, counterfeited:
- (10.) "Stamp," "stamps," mean as well stamps impressed by means of a die as adhesive stamps:
- (11.) "Stamped" is applicable as well to instruments and material impressed with stamps by means of a die, as to instruments and material having adhesive stamps affixed thereto:
- (12.) "Executed," "execution," with reference to instruments not under seal, mean signed, signature:
- (13.) "Person" includes corporation, company, and society.

3. The duties shall be under the care and management of the Commissioners, who shall have all necessary powers and authorities for carrying this Act into execution, and shall observe and obey in relation thereto the directions of the Commissioners of Her Majesty's Treasury.

4. Where by any Act heretofore passed reference is made to the enactments relating to stamp duties in force at the time of the passing of such Act, such reference shall after the passing of this Act be read and construed as a reference to this Act, instead of the said enactments.

5. The Commissioners may, at their discretion, grant a licence to any person to deal in stamps at any place or places in the United Kingdom to be named in such licence, and every person to whom any such licence is granted shall enter into a bond (which shall be exempt from stamp duty) to Her Majesty, her heirs or successors, in a penal

sum of one hundred pounds, with a condition that such licensed person does not sell or offer for sale or exchange, or keep or have in his possession for the purpose of sale or exchange, any stamps other than such as he has purchased or procured at the chief office or at one of the head offices, or from some person duly appointed to sell and distribute stamps, or duly licensed to deal in stamps: Provided that one licence and one bond only shall be required for any number of persons in copartnership, and any such licence may at any time be revoked by the Commissioners.

6. Every licence to be granted as aforesaid is to specify the proper Christian name and surname and place of abode of the person to whom the same is granted, and is to contain a true description of every house or shop in or at which he is by such licence authorized to deal in stamps; and such person shall not be thereby authorized or entitled to deal in stamps in or at any house, shop, or place not specified and described in his licence.

7. (1.) Every person who—

(a.) Not being duly appointed to sell and distribute stamps, or duly licensed to deal in stamps, deals in any manner in stamps in any part of the United Kingdom;

(b.) Being duly licensed to deal in stamps, deals in any manner in stamps at any house, shop, or place not specified and described in his licence,

shall for every such offence forfeit the sum of twenty pounds:

(2.) If in any proceeding for recovery of the said penalty of twenty pounds it appears that any stamp which has been sold or exchanged, or offered for sale or exchange, is forged, although the same may not have been so alleged in the information or pleading, the said penalty of twenty pounds shall be doubled, and judgment shall be given against the offender for the sum of forty pounds, and the special matter shall be stated in the judgment as the cause of such increase of penalty:

(3.) If on any such proceeding any issue is tried by a jury in which the selling or exchanging, or offering for sale or exchange, of any stamp, is in question, the jury shall be required to say whether such stamp is forged or not:

(4.) Provided that nothing in this section contained shall exempt any person from the legal consequences of selling, uttering, or having in possession any forged stamp, knowing the same to be forged.

8. Every person who is licensed to deal in stamps shall cause to be painted at full length, in

Roman capital letters, one inch at least in height, and of a proper and proportionate breadth, on some conspicuous place on the outside of the front of every house or shop in or at which he is licensed to deal in stamps, and so that the same may be at all times plainly and distinctly visible and legible, his Christian name and surname, together with the words "Licensed to sell stamps," and shall continue such names and words so painted as aforesaid during all the time that he continues licensed as aforesaid, and for every neglect or omission in any of such matters shall forfeit the sum of ten pounds.

9. If any person who is not duly appointed to sell and distribute stamps, or duly licensed to deal in stamps, writes, paints, or marks, or causes or procures to be written, painted, or marked, or permits or suffers to continue written, painted, or marked, upon any part of his house or shop, either in the inside or on the outside thereof, or upon any board or any material whatever exposed to public view, and whether the same be affixed to his house or shop or not, any word or words importing or signifying, or intended to import or signify, that he is a dealer in stamps, he shall forfeit the sum of ten pounds for every day on which such offence is committed or continued.

10. (1.) If any person licensed to deal in stamps dies or becomes bankrupt, or if the licence of any person to deal in stamps expires or is revoked, and any such person at the time of his death or bankruptcy, or at the expiration or revocation of his licence, has in his possession any stamps, such person, or his executor or administrator, or the trustee under his bankruptcy, may, within three months after the expiration or revocation of such licence, or next after such death or bankruptcy, as the case may be, bring or send such stamps to the chief office or to one of the head offices:

(2.) The Commissioners may in any such case pay to the person bringing or sending any stamps the amount of the duty thereon, deducting therefrom the proper discount:

(3.) Provided that the person who brings or sends such stamps makes proof to the satisfaction of the Commissioners—

(a.) That the same were actually in the possession of the person so dying or becoming bankrupt, or whose licence has expired or been revoked, for the purpose of sale, at the time when such person died or became bankrupt, or when such licence expired or was revoked;

(b.) That such stamps were purchased or procured by the person to whom such licence was granted at the chief office or at one of the head offices, or from some person duly appointed to sell and distribute stamps, or duly licensed to deal in stamps.

11. (1.) If any person, whether licensed to deal in stamps or not, hawks or carries about, or offers for sale or exchange, any stamps, he shall forfeit the sum of twenty pounds, over and above any penalty to which, if unlicensed, he may be liable for dealing in stamps without a licence; and it shall be lawful for any person, without any other warrant than this Act, to apprehend any person so offending, and take him or cause him to be taken before a justice of the peace having jurisdiction where the offence is committed, who shall hear and determine the matter; and if the offender does not immediately on his conviction pay the said penalty of twenty pounds, he shall be committed to prison for any period not less than one month nor more than three months, unless the penalty be sooner paid:

(2.) All stamps which are found in the possession of any such offender shall be forfeited, and shall be taken possession of by the justice, and delivered to the Commissioners, to be disposed of as they think fit:

(3.) If the offender is not apprehended and proceeded against in the manner herein-before mentioned, the said penalty of twenty pounds is to be recoverable in the same manner as any other penalty hereby imposed.

12. Notwithstanding anything in this Act contained, it shall be lawful for any person in the service or employment of the Post Office, without any other licence or authority than this Act, to sell postage stamps at any place, and to carry postage stamps about for sale.

13. Upon the sale of stamps such discount shall be allowed to the purchasers thereof as the Commissioners of Her Majesty's Treasury shall direct.

14. Subject to such regulations as the Commissioners may think proper to make, and to the production of such evidence by affidavit or otherwise as the Commissioners may require, allowance is to be made by the Commissioners for stamps spoiled in the cases herein-after mentioned; (that is to say,)

(1.) The stamp on any material inadvertently and undesignedly spoiled, obliterated, or by any means rendered unfit for the purpose intended, before any instrument written thereon is executed by any party, and for which stamp no money or other consideration has been paid or given to the attorney, solicitor, or other person employed to transact the business intended to have been carried into execution thereby, or to the person by whom the same was written:

(2.) Any adhesive stamp which has never been used or affixed to any material, but which

has been inadvertently and undesignedly spoiled or rendered unfit for use :

- (3.) The stamp used or intended to be used for any bill of exchange or promissory note, signed by or on behalf of the drawer or intended drawer, but not delivered out of his hands to the payee or intended payee, or any person on his behalf, or deposited with any person as a security for the payment of money, or in any way negotiated, issued, or put in circulation, or made use of in any other manner whatever, and which being a bill of exchange has not been accepted by the drawee, and provided that the material on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange to be afterwards written thereon :

- (4.) The stamp used or intended to be used for any bill of exchange or promissory note signed by or on behalf of the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange, may have been presented for acceptance or accepted or indorsed, or, being a promissory note, may have been delivered to the payee, provided that another completed and duly stamped bill of exchange or promissory note is produced identical in every particular, except in the correction of such error or omission as aforesaid, with the spoiled bill or note :

- (5.) The stamp used for any of the following instruments, that is to say,

(a.) The presentation to an ecclesiastical benefice not followed by institution :

(b.) An instrument executed by any party thereto, but afterwards found to be absolutely void in law from the beginning :

(c.) An instrument executed by any party thereto, but afterwards found unfit by reason of any error or mistake therein for the purpose originally intended :

(d.) An instrument executed by any party thereto, but which by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, or to advance any money intended to be thereby secured, cannot be completed so as to effect the intended transaction in the form proposed :

(e.) An instrument executed by any party thereto which for want of the execution thereof by some material

and necessary party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended :

(f.) An instrument executed by any party thereto, which by reason of the refusal of any person to act under the same, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose :

(g.) An instrument executed by any party thereto, which for want of enrolment or registration within the time required by law becomes null and void :

(h.) An instrument executed by any party thereto, which becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument duly stamped :

(i.) An instrument executed by any party thereto which is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :

Provided as follows :

- (1.) That in the case of an executed instrument,

(a.) The instrument is given up to be cancelled :

(b.) The application for relief is made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, except where from unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, and in that case within six months after the date of execution of the substituted instrument, and except where the spoiled instrument has become void for want of enrolment or registration, and in that case within six months next after it has so become void, and except also where the spoiled instrument has been sent abroad, and in that case within six months after it has been received back in any part of the United Kingdom :

(c.) No action has been brought or suit commenced in which the instrument could or would have been given or offered in evidence :

- (2.) That in the case of stamped material, not having any executed instrument written thereon, and of an adhesive stamp not affixed to any material, the application for relief is made within six months after the stamp has been spoiled as aforesaid.

15. When any person has inadvertently used for an instrument liable to duty a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not liable to any duty, the Commissioners may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if liable to any duty, being restamped with the proper duty, cancel and allow as spoiled the stamp so misused.

16. In any case in which allowance is made for spoiled or misused stamps the Commissioners may give in lieu thereof other stamps of the same denomination and value, or if required, and they think proper, stamps of any other denomination to the same amount in value, or, at their discretion, the same value in money, deducting the proper allowance on the purchase of stamps of the like description.

17. When any person is possessed of a stamp which has not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Commissioners may, if they in their discretion think fit, repay to him the amount or value of such stamp in money, deducting the proper discount, upon his delivering up the stamp to be cancelled, and proving to their satisfaction that it was purchased by him with a bona fide intention to use it, and that he has paid the full value thereof without any deduction (except only the amount of such discount), and that the stamp was so purchased within the period of six months next preceding the application at the chief office or at one of the head offices, or from some person duly appointed to sell and distribute stamps or duly licensed to deal in stamps.

18. Any person who does, or causes or procures to be done, or knowingly aids, abets, or assists in doing, any of the acts following, that is to say,

- (1.) Forging a die or stamp;
- (2.) Making an impression upon any material with a forged die;
- (3.) Fraudulently cutting, tearing, or in any way removing from any material any stamp, with the intent that any use should be made of such stamp or of any part thereof;

- (4.) Fraudulently mutilating any stamp, with intent that any use should be made of any part of such stamp;
- (5.) Fraudulently fixing or placing upon any material or upon any stamp, any stamp or part of a stamp which, whether fraudulently or not, has been cut, torn, or in any way removed from any other material, or out of or from any other stamp;
- (6.) Fraudulently erasing or otherwise either really or apparently removing from any stamped material any name, sum, date, or other matter or thing whatsoever thereon written, with the intent that any use should be made of the stamp upon such material;
- (7.) Knowingly selling or exposing for sale or uttering or using any forged stamp;
- (8.) Knowingly, and without lawful excuse (the proof of which lawful excuse lies on the person accused) having in possession any forged die or stamp, or any stamp or part of a stamp which has been fraudulently cut, torn, or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date, or other matter or thing has been fraudulently erased or otherwise either really or apparently removed, is guilty of felony, and upon being convicted shall be liable to be subjected to penal servitude for the term of his natural life or for any term not less than five years, or to be imprisoned for any term not exceeding three years.

19. On information given before any justice of the peace upon oath that there is just cause to suspect any person of being guilty of any of the offences aforesaid, such justice may, by a warrant under his hand, cause every dwelling-house, room, workshop, outhouse, or other building or place belonging to or occupied by the suspected person, or where he is suspected of being or having been in any way engaged or concerned in the commission of any such offence, or of secreting any forged die or stamp, or any machinery, implements, or utensils applicable to the commission of any such offence, to be searched, and if upon such search any of the said several matters and things are found the same may be seized and carried away, in order that they may be produced in evidence against any offender, and shall afterwards, whether produced in evidence or not, by order of the court or judge before whom such offender is tried, or in case there shall be no such trial, by order of some justice of the peace, be delivered over to the Commissioners, to be defaced or destroyed or otherwise disposed of as they may think fit.

20. (1.) Upon information given to the Commissioners that there is reasonable cause to suspect that any person appointed to sell and distribute stamps, or being or having been licensed to deal in stamps, has in his possession any forged stamps, the Commissioners may by warrant under their hands authorise any person to enter between the hours of nine in the morning and seven in the evening into any dwelling-house, room, shop, warehouse, outhouse, or other building of or belonging to any such suspected person; and if on demand of admittance, and notice of such warrant, the door of any such dwelling-house, room, shop, warehouse, outhouse, or other building, or any inner door thereof, is not opened, then such authorized person may break open the same respectively, and search for and seize any stamps that may be found in any such place as aforesaid, or elsewhere in the custody or possession of such suspected person.

(2.) All constables and other peace officers are hereby required, upon the request of any person acting under such warrant, to aid and assist in the execution thereof.

(3.) Any person who—

(a.) Refuses to permit any such search or seizure to be made as aforesaid;

(b.) Assaults, opposes, molests, or obstructs any person employed or acting in the execution or under the authority of any such warrant, or aiding or assisting in the execution thereof;

and every constable or peace officer who, upon any such request as aforesaid, refuses or neglects to aid and assist in the execution of any such warrant as aforesaid, shall forfeit the sum of fifty pounds.

21. (1.) The person who is intrusted with the execution of any such warrant as aforesaid shall, if required, give to the person in whose custody or possession any stamps are found and seized an acknowledgment of the number, particulars, and amount of the stamps so seized, and shall permit such last-mentioned person, or any person employed by him, to mark such stamps before the removal thereof:

(2.) If the person in whose custody or possession any stamps are so found and seized is or has been a licensed dealer in stamps, he shall be entitled to claim and receive in money from the Commissioners the amount of such of the stamps so seized as may be found to be genuine (deducting therefrom the proper discount), and also to receive the value of the material whereon the same may be impressed according to the rates at which material of the like quality and description is sold by the Commissioners, or, if the Commissioners think fit, such of the stamps so seized as may be found to be genuine may be returned to

the person from whose custody or possession the same have been taken, with such reasonable amends as the Commissioners of Her Majesty's Treasury may think fit to award.

22. If any forged stamps are found in the possession of any person appointed to sell and distribute stamps, or being or having been licensed to deal in stamps, such person shall be deemed and taken, unless the contrary is satisfactorily proved, to have had the same in his possession knowing them to be forged, and with intent to sell, use or utter them, and shall be liable to all penalties and punishments imposed or inflicted by law upon persons selling, using, uttering, or having in possession forged stamps knowing the same to be forged.

23. (1.) Any justice of the peace having jurisdiction in the place where any stamps are known or supposed to be concealed or deposited, may, upon reasonable suspicion that the same have been stolen or fraudulently obtained, issue his warrant for the seizure thereof, and for apprehending and bringing before himself or any other justice within the same jurisdiction the person in whose possession or custody such stamps may be found, to be dealt with according to law:

(2.) If such person omits or refuses to account for the possession of such stamps, or is unable satisfactorily to account for the possession thereof, or if it does not appear that the same were purchased by him at the chief office or at one of the head offices, or from some person duly appointed to sell and distribute stamps or duly licensed to deal in stamps, such stamps of which no account or no satisfactory account is given, or which do not appear to have been so purchased as aforesaid, shall be forfeited to Her Majesty, her heirs or successors, and shall be accordingly condemned by such justice and delivered over to the Commissioners; and any stamps so condemned shall be kept by the Commissioners for the space of six months, and afterwards cancelled and destroyed, or disposed of as the Commissioners think fit:

(3.) Provided, that if at any time within six months after such condemnation any person makes out to the satisfaction of the Commissioners that any stamps so condemned were stolen or otherwise fraudulently obtained from him, and that the same were purchased by him at the chief office or one of the head offices, or from some person duly appointed to sell and distribute stamps, or duly licensed to deal in stamps, such stamps may be delivered up to him.

24. Whenever the Commissioners determine to discontinue the use of any die, and provide a new die to be used in lieu thereof, and give public notice thereof in the London, Edinburgh, and

Dublin Gazette, then from and after any day to be stated in the notice (such day not being within one month after the same is so published) such new die shall be the only lawful die for denoting the duty chargeable in any case in which the discontinued die would have been used if it had not been so discontinued; and every instrument first executed by any person, or bearing date after the day so stated, and stamped with the discontinued die, shall be deemed to be not duly stamped:

Provided as follows:

- (1.) If any instrument stamped as last aforesaid, and first executed after the day so stated at any place out of the United Kingdom, is brought to the Commissioners within fourteen days after it has been received in the United Kingdom, then upon proof of the facts to the satisfaction of the Commissioners the stamp thereon shall be cancelled, and the instrument shall be stamped with the same amount of duty by means of the lawful die, without the payment of any penalty:
- (2.) All persons having in their possession any material stamped with the discontinued die, and which by reason of the providing of such new die has been rendered useless, may at any time within six months after the day mentioned in such notice send the same to the chief office or either of the head offices, and the Commissioners may thereupon cause the stamps on such material to be cancelled, and the same material, or, if the Commissioners think fit, any other material, to be stamped with the new die, in lieu of and to an equal amount with the stamps so cancelled.

25. Every person who by any writing in any manner defaces any adhesive stamp before it is used shall forfeit the sum of five pounds: Provided that any person may with the express sanction of the Commissioners, and in the manner and in conformity with the conditions which they may prescribe, write upon an adhesive stamp before it is used for the purpose of identification thereof.

26. (1.) Penalties incurred under this Act are to be sued for by information in the Court of Exchequer, in England in the name of the Attorney General for England, in Scotland in the name of the Lord Advocate, and in Ireland in the name of the Attorney General for Ireland, and may be recovered with full costs of suit.

(2.) The Commissioners may, at their discretion, mitigate or stay or compound proceedings for any penalty, and reward any person who may inform them of any offence against this Act, or assist in the recovery of any penalty.

27. Any affidavit or statutory declaration to be made in pursuance of or for the purposes of this Act may be made before any of the Commissioners, or any officer or person authorised by them in that behalf, or before any person appointed to administer oaths in Chancery in England or Ireland, or before any person commissioned to take affidavits by the Court of Session in Scotland, or any justice of the peace or notary public in any part of the United Kingdom, or at any place out of the United Kingdom before any person duly authorized to administer oaths there.

---

#### CHAP. 99.

#### *The Inland Revenue Repeal Act, 1870.*

---

##### ABSTRACT OF THE ENACTMENTS.

1. *Short title and commencement of Act.*
  2. *Enactments in schedule repealed.*
  3. *Interpretation of "the whole Act."*  
*Schedule.*
-

**An Act for the repeal of certain Enactments relating to the Inland Revenue.**  
(10th August 1870.)

WHEREAS it is expedient that the enactments described in the schedule to this Act should be repealed to the extent and in manner herein-after appearing :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as "The Inland Revenue Repeal Act, 1870," and shall come into operation on the first day of January one thousand eight hundred and seventy-one.

2. The enactments described in the schedule to this Act are hereby repealed, subject to the exceptions in the said schedule mentioned: Provided that this repeal shall not affect the past operation of any enactments hereby repealed, or the sufficiency or insufficiency of the stamp duty upon any instrument executed or signed, or the validity or invalidity of anything done or suffered before the said first day of January one thousand eight hundred and seventy-one; nor shall this repeal interfere with the institution or prosecution of any proceeding in respect of any offence committed, or any penalty or forfeiture incurred against or under any enactment hereby repealed.

3. The expression "the whole Act," when used in the said schedule with reference to any Act which has been already in part repealed, means the whole Act so far as it has not been repealed.

**SCHEDULE.**

**ENACTMENTS REPEALED.**

Session and Chapter.	Title or abbreviated Title.	Extent of Repeal.
5 & 6 W. & M. c. 21.	- An Act for granting to their Majesties several duties, &c.	The whole Act.
6 & 7 W. & M. c. 6.	- An Act for granting to His Majesty certain rates, &c.	The whole Act.
6 & 7 W. & M. c. 12.	- An Act for explaining and regulating certain doubts, &c.	The whole Act.
7 & 8 Will. 3. c. 35.	- An Act for the enforcing the laws which restrain marriage, &c.	The whole Act.
9 Will. 3. c. 25.	- An Act for granting to His Majesty, His heirs and successors, further duties, &c.	The whole Act.
1 Ann. st. 2. c. 19.	- An Act for preventing frauds in Her Majesty's duties, &c.	The whole Act.
8 Ann. c. 5.	- An Act for laying certain duties upon candles, &c.	The whole Act.
9 Ann. c. 15.	- An Act for making good deficiencies, &c.	The whole Act.
9 Ann. c. 16.	- An Act for licensing and regulating hackney coaches, &c.	The whole Act.
10 Ann. c. 18.	- An Act for laying several duties, &c.	The whole Act, except section 198.
10 Ann. c. 19.	- An Act for laying additional duties, &c.	The whole Act.
13 Ann. c. 18.	- An Act for laying additional duties, &c.	The whole Act.
6 Geo. 1. c. 21.	- An Act for preventing frauds and abuses, &c.	The whole Act.
18 Geo. 2. c. 22.	- An Act for granting to His Majesty the sum of 800,000 <i>l.</i> , &c.	The whole Act.
20 Geo. 2. c. 45.	- An Act to continue several laws, &c.	The whole Act.

Session and Chapter.	Title or abbreviated Title.	Extent of Repeal.
30 Geo. 2. c. 19. - -	An Act for granting to His Majesty several rates, &c.	Sections from 1 to 27, both inclusive, and 74 and 75.
2 Geo. 3. c. 36. - -	An Act for better securing, &c. -	The whole Act.
5 Geo. 3. c. 35. - -	An Act for granting to His Majesty certain duties, &c.	The whole Act.
5 Geo. 3. c. 46. - -	An Act for altering the stamp duties, &c.	The whole Act.
6 Geo. 3. c. 40. - -	An Act for explaining and amending, &c.	The whole Act.
7 Geo. 3. c. 44. - -	An Act for altering the stamp duties on policies of assurance, &c.	The whole Act.
8 Geo. 3. c. 25. - -	An Act for reducing the duties on foul salt, &c.	The whole Act.
12 Geo. 3. c. 48. - -	An Act for the more effectual preventing of frauds, &c.	The whole Act.
16 Geo. 3. c. 34. - -	An Act for granting to His Majesty several duties, &c.	Sections from 1 to 16, both inclusive.
17 Geo. 3. c. 50. - -	An Act for granting to His Majesty certain duties, &c.	The whole Act.
25 Geo. 3. c. 80. - -	An Act for granting to His Majesty certain duties, &c.	The whole Act.
26 Geo. 3. c. 48. - -	An Act for granting to His Majesty certain duties, &c.	The whole Act.
26 Geo. 3. c. 82. - -	An Act for the more effectually carrying into execution, &c.	The whole Act.
27 Geo. 3. c. 13. - -	An Act for repealing the several duties of customs and excise, &c.	Sections 41 to 46, both inclusive.
31 Geo. 3. c. 25. - -	An Act for repealing the duties now charged on bills of exchange, &c.	The whole Act.
34 Geo. 3. c. 14. - -	An Act for granting to His Majesty certain stamp duties, &c.	The whole Act.
35 Geo. 3. c. 55. - -	An Act for granting to His Majesty certain additional duties on receipts.	The whole Act.
37 Geo. 3. c. 19. - -	An Act for the more effectually securing the stamp duties, &c.	The whole Act.
37 Geo. 3. c. 90. - -	An Act for granting to His Majesty certain stamp duties, &c.	The whole Act.
37 Geo. 3. c. 136. - -	An Act to enable the Commissioners of stamp duties, &c.	The whole Act.
38 Geo. 3. c. 56. - -	An Act for repealing so much of an Act, &c.	The whole Act.
38 Geo. 3. c. 85. - -	An Act for explaining and amending certain Acts, &c.	The whole Act.
39 Geo. 3. c. 92. - -	An Act for altering the period, &c.	The whole Act.
39 Geo. 3. c. 107. - -	An Act for granting to His Majesty certain stamp duties, &c.	The whole Act.
39 & 40 Geo. 3. c. 72. - -	An Act to amend several laws, &c.	The whole Act, except section 16.
39 & 40 Geo. 3. c. 84. - -	An Act to render valid, &c.	The whole Act.
42 Geo. 3. c. 99. - -	An Act for allowing the stamping certain deeds, &c.	The whole Act.
43 Geo. 3. c. 126. - -	An Act for granting to His Majesty certain duties on receipts.	The whole Act.
43 Geo. 3. c. 127. - -	An Act for consolidating the duties, &c.	The whole Act.



Session and Chapter.	Title or abbreviated Title.	Extent of Repeal.
44 Geo. 3. c. 59. - -	An Act to indemnify solicitors, attorneys, and others, &c.	Sections 1 and 2.
44 Geo. 3. c. 98. - -	An Act to repeal the several duties, &c.	The whole Act, except so far as it relates to the duties on medicines and on licences for vending the same.
46 Geo. 3. c. 43. - -	An Act for granting to His Majesty certain stamp duties, &c.	The whole Act, except sections 4, 5, 6, and 7.
48 Geo. 3. c. 149. - -	An Act for repealing the stamp duties, &c.	Sections 1 to 34, both inclusive, and 45, 48, and 49.
50 Geo. 3. c. 35. - -	An Act for altering the mode of collecting, &c.	The whole Act.
53 Geo. 3. c. 108. - -	An Act for altering, explaining, and amending, &c.	The whole Act.
54 Geo. 3. c. 144. - -	An Act for better securing, &c. -	The whole Act.
55 Geo. 3. c. 100. - -	An Act to provide for the collection and management, &c.	The whole Act, except sections 19 and 20.
55 Geo. 3. c. 101. - -	An Act to regulate the collection of stamp duties, &c.	The whole Act.
55 Geo. 3. c. 184. - -	An Act for repealing the stamp duties on deeds, &c.	Sections 1, 3 to 20, both inclusive, 29, 30, and 31; section 2, except so far as it relates to the duties contained in the 3rd part of the Schedule and to licences to bankers and pawnbrokers. Part 1 of the Schedule, except so far as it relates to licences to bankers and pawnbrokers; and Part 2 of the Schedule.
55 Geo. 3. c. 185. - -	An Act for repealing the Stamp Office duties on advertisements, &c.	The whole Act, except so far as it relates to the duties on plate.
56 Geo. 3. c. 56. - -	An Act to repeal the several stamp duties in Ireland, &c.	The whole Act, except sections 115 to 131, both inclusive.
1 & 2 Geo. 4. c. 55. - -	An Act to remove doubts, &c. -	The whole Act.
3 Geo. 4. c. 117. - -	An Act to reduce the stamp duties on reconveyances of mortgages, &c.	The whole Act.
5 Geo. 4. c. 41. - -	An Act to repeal certain duties on law proceedings, &c.	The whole Act.
6 Geo. 4. c. 41. - -	An Act to repeal the stamp duties payable in Great Britain and Ireland, &c.	The whole Act.
7 Geo. 4. c. 44. - -	An Act to allow, &c. - - -	The whole Act.
9 Geo. 4. c. 27. - -	An Act to repeal the allowances made to stationers, &c.	The whole Act.
9 Geo. 4. c. 49. - -	An Act to amend the laws in force relating to the stamp duties on sea insurances, &c.	The whole Act, except so much of section 12 as relates to licences to pawnbrokers.
2 & 3 Will. 4. c. 91. - -	An Act to explain doubts, &c. -	The whole Act.
3 & 4 Will. 4. c. 23. - -	An Act to reduce the stamp duties on advertisements, &c.	The whole Act.
3 & 4 Will. 4. c. 97. - -	An Act to prevent the selling and uttering of forged stamps, &c.	The whole Act, except sections 20 and 21.
4 & 5 Will. 4. c. 57. - -	An Act to repeal the stamp duties on almanacks, &c.	The whole Act.
5 & 6 Will. 4. c. 64. - -	An Act to alter certain duties, &c.	Sections 1, 2, and 7.

Session and Chapter.	Title or abbreviated Title.	Extent of Repeal.
6 & 7 Will. 4. c. 76.	- An Act to reduce the duties on newspapers, &c.	The whole Act.
1 & 2 Vict. c. 85.	- An Act to authorise the using, &c.	The whole Act.
3 & 4 Vict. c. 79.	- An Act to amend the law relating to the admission, &c.	The whole Act.
4 & 5 Vict. c. 34.	- An Act to explain and amend an Act, &c.	The whole Act.
5 & 6 Vict. c. 79.	- An Act to repeal the duties payable on stage carriages, &c.	Sections 3, 21, and 22, and so much of the Schedule as relates to the stamp duties on instruments, &c. thereby granted.
5 & 6 Vict. c. 82.	- An Act to assimilate the stamp duties in Great Britain and Ireland, &c.	The whole Act, except so far as it relates to— (1) Duties contained in the 3d part of the Schedule to 55 Geo. 3. c. 184. (2) Licences to bankers, pawn-brokers, and appraisers. (3) Composition for duties on banker's notes. (4) Duties on, and licences to deal in, plate.
6 & 7 Vict. c. 72.	- An Act to impose certain stamp duties, &c.	The whole Act.
7 & 8 Vict. c. 21.	- An Act to reduce the stamp duties on policies of sea insurance, &c.	The whole Act.
8 & 9 Vict. c. 76.	- An Act to increase the stamp duty on licences to appraisers, &c.	Sections 2 and 3.
12 & 13 Vict. c. 80.	- An Act to repeal the allowances on the purchase of stamps, &c.	The whole Act, except so much of section 2 as relates to the allowance for receiving duty on plate.
13 & 14 Vict. c. 97.	- An Act to repeal certain stamp duties, &c.	The whole Act, except section 8, so far as it relates to money received as and for the duty upon or in respect of any legacy or residue.
16 & 17 Vict. c. 59.	- An Act to repeal certain stamp duties, &c.	The whole Act, except sections 8, 17, 19, and 20, and also section 20, so far as it continues or perpetuates any enactment hereby repealed.
16 & 17 Vict. c. 63.	- An Act to repeal certain stamp duties, &c.	The whole Act, except section 7.
16 & 17 Vict. c. 71.	- An Act to amend the law relating to the stamp duties on newspapers.	The whole Act.
17 & 18 Vict. c. 83.	- An Act to amend the laws relating to the stamp duties.	The whole Act, except sections 11, 12, and 20.
17 & 18 Vict. c. 125.	- An Act for the further amendment of the process, practice, and mode of pleading, &c.	Sections 28 and 29.
18 & 19 Vict. c. 27.	- An Act to amend the law relating to the stamp duties on newspapers, &c.	The whole Act.
18 & 19 Vict. c. 78.	- An Act to reduce certain duties, &c.	Section 5.
19 & 20 Vict. c. 22.	- An Act to amend the laws relating to the duties on fire insurances.	The whole Act.

Session and Chapter.	Title or abbreviated Title.	Extent of Repeal.
19 & 20 Vict. c. 81.	- An Act to reduce the stamp duties on certain instruments of proxy, &c.	The whole Act.
19 & 20 Vict. c. 102.	- An Act to further amend the procedure in and to enlarge the jurisdiction of the superior courts of common law in Ireland.	Sections 34 and 35.
21 & 22 Vict. c. 20.	- An Act for granting a stamp duty on certain drafts, &c.	The whole Act.
21 & 22 Vict. c. 24.	- An Act to reduce the stamp duties on passports.	The whole Act.
23 & 24 Vict. c. 15.	- An Act for granting to Her Majesty certain duties of stamps.	The whole Act, except sections 4, 5, and 6.
23 & 24 Vict. c. 111.	- An Act for granting to Her Majesty certain duties of stamps, &c.	Sections 1 to 18, both inclusive, and the schedule.
24 & 25 Vict. c. 21.	- An Act for granting to Her Majesty certain duties of excise and stamps.	Sections 14 and 15, and so much of Schedule (B.) as relates to the duties on bills of exchange and on leases or tacks, and the duplicates or counterparts thereof.
24 & 25 Vict. c. 50.	- An Act for facilitating the transfer of mortgages and bonds, &c.	The whole Act.
24 & 25 Vict. c. 91.	- An Act to amend the laws relating to the Inland Revenue.	Sections 25, 26, 27, 28, 30, 31, 32, 33, and 34.
25 & 26 Vict. c. 22.	- An Act to continue certain duties, &c.	Section 38, and so much of Schedule (C.) as relates to the stamp duty on foreign bonds or securities.
27 & 28 Vict. c. 18.	- An Act to grant certain duties of Customs and Inland Revenue.	Sections 11, 12, 13, and 14, and Schedule (C.)
27 & 28 Vict. c. 56.	- An Act for granting to Her Majesty certain stamp duties, &c.	Sections 2, 3, 16, and 17.
27 & 28 Vict. c. 90.	- An Act to amend an Act of the present session, chapter 18, &c.	The whole Act.
28 & 29 Vict. c. 96.	- An Act to amend the laws relating to the Inland Revenue.	Sections 1 to 7, both inclusive, 10 to 17, both inclusive, 19 to 22, both inclusive, and 30.
29 & 30 Vict. c. 64.	- An Act to amend the laws relating to the Inland Revenue.	Section 16.
30 & 31 Vict. c. 90.	- An Act to alter certain duties, &c.	Sections 20 to 24, both inclusive.
30 & 31 Vict. c. 96.	- An Act to facilitate the recovery of certain debts, &c.	Section 23.
31 & 32 Vict. c. 100.	- An Act to amend the procedure in the Court of Session, &c.	Section 41, except so far as it relates to the deliverance of the judge, and section 42.
31 & 32 Vict. c. 124.	- An Act to amend the laws relating to the Inland Revenue.	Sections 10, 11, and 12.

## CHAP. 100.

*The Greenwich Hospital Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title and construction.*
2. *Section 51. of 28 & 29 Vict. c. 89. repealed, and other provisions substituted.*

An Act to amend the Law relating to the repayment to the Consolidated Fund of money expended for the benefit of Greenwich Hospital.

(10th August 1870.)

WHEREAS it is expedient that the amount expended out of money provided by Parliament for the benefit of Greenwich Hospital should be repaid out of the revenue of Greenwich Hospital to the Consolidated Fund, so far as may be, quarterly instead of yearly:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as *The Greenwich Hospital Act, 1870*, and this Act and the *Greenwich Hospital Acts, 1865 and 1869*, shall be construed as one Act and may be cited together as *The Greenwich Hospital Acts, 1865 to 1870*.

2. Section fifty-one of the *Greenwich Hospital Act, 1865*, is hereby repealed, and in place thereof the following words shall be deemed to be section fifty-one of that Act, and may be hereafter printed as forming portion thereof in place of the section

hereby repealed, and *The Greenwich Hospital Act, 1865*, shall be construed as if section fifty-one thereof had been originally expressed in the following words; that is to say,

Her Majesty's Paymaster General shall, under the direction of the Admiralty, pay from the *Greenwich Hospital income account* into the receipt of Her Majesty's Exchequer as soon as may be after the first of April, first of July, first of October, and first of January in every year, a sum about equal to one fifth of the total amount of money provided by Parliament for the purposes of the *Greenwich Hospital Acts, 1865 and 1869*, during that year, and as soon as may be after the receipt by the Admiralty of the certificate furnished by the Comptroller and Auditor General of the amount expended in the said year out of money so provided, the sum (if any) by which the amount stated in such certificate exceeds the amount of the four quarterly sums paid within the said year in pursuance of this section.

If the amount stated in such certificate is less than the amount of the said four quarterly sums, Her Majesty's Paymaster General shall forthwith, under the direction of the Commissioners of Her Majesty's Treasury, pay the sum by which it is so less out of the growing produce of the Consolidated Fund to the credit of the *Greenwich Hospital income account*.

## CHAP. 101.

*Pensions Commutation Act (1869) Amendment.*

## ABSTRACT OF THE ENACTMENTS.

1. *Amendment of section 6. of 32 and 33 Vict. c. 32.*

An Act for amending the Sixth Section of the *Pensions Commutation Act, 1869*.  
(10th August 1870.)

WHEREAS by the sixth section of the *Pensions Commutation Act, 1869*, it is provided that "the Commissioners for the Reduction of the National Debt, with the consent of the Treasury, may

" pay the amounts awarded as commutations of  
" pensions out of any funds for the time being  
" in their hands under the authority of the Act  
" of the twenty-fourth year of the reign of Her  
" present Majesty, chapter twenty-four, and the  
" Act of the session of the twenty-sixth and  
" twenty-seventh years of the same reign, chapter  
" eighty-seven, or either of such Acts :"

And whereas chapter fourteen, intituled "An Act to grant additional facilities for depositing small savings at interest, with the security of the Government for due repayment thereof," ought to be substituted for chapter twenty-four in the said section :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. Section six of the Pensions Commutation

Act, 1869, shall be construed as if the words "chapter fourteen" were and had at and from the date of the passing of such last-mentioned Act been inserted therein in the place of "chapter twenty-four," and Her Majesty's printers shall in all copies of the Pensions Commutation Act, 1869, which may be printed after the passing of this Act, insert the words "chapter fourteen" in the place of the words "chapter twenty-four" in section six of the said Pensions Commutation Act.

## CHAP. 102.

### *The Naturalization Oath Act, 1870.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Regulations as to oaths of allegiance.*
2. *Penalty on making false declaration.*
3. *Construction and short title of Act.*

An Act to amend the Law relating to the taking of Oaths of Allegiance on Naturalization. (10th August 1870.)

WHEREAS it is expedient to amend the law relating to the taking of oaths of allegiance under the Naturalization Act, 1870 :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The power of making regulations vested in one of Her Majesty's Principal Secretaries of State by the Naturalization Act, 1870, shall extend to prescribing as follows :

- (1.) The persons by whom the oaths of allegiance may be administered under that Act:
- (2.) Whether or not such oaths are to be subscribed as well as taken, and the form in which such taking and subscription are to be attested:
- (3.) The registration of such oaths :
- (4.) The persons by whom certified copies of such oaths may be given :
- (5.) The transmission to the United Kingdom for the purpose of registration or safe

keeping or of being produced as evidence of any oaths taken in pursuance of the said Act out of the United Kingdom, or of any copies of such oaths, also of copies of entries of such oaths contained in any register kept out of the United Kingdom in pursuance of this Act :

- (6.) The proof in any legal proceeding of such oaths :
- (7.) With the consent of the Treasury, the imposition and application of fees in respect of the administration or registration of any such oath.

The two last paragraphs in the eleventh section of the Naturalization Act, 1870, shall apply to regulations made under this Act.

2. Any person wilfully and corruptly making or subscribing any declaration under the Naturalization Act, 1870, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanor, and be liable to imprisonment with or without hard labour for any term not exceeding twelve months.

3. This Act shall be termed the Naturalization Oath Act, 1870, and shall be construed as one with the Naturalization Act, 1870, and may be cited together with that Act as the Naturalization Acts, 1870.

## CHAP 103.

*Expiring Laws Continuance Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Continuance of Acts in schedule.*  
*Schedule.*

An Act to continue various expiring  
Laws. (10th August 1870.)

WHEREAS the several Acts mentioned in column one of the schedule to this Act are, to the extent specified in column two of that schedule, limited to expire at the times specified in respect thereof in column four of the said schedule:

And whereas it is expedient to continue such Acts, to the extent specified in column two of the said schedule and the Acts amending the same, in so far as they are temporary in their duration, for the times mentioned respectively in column five of the said schedule:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of

the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Expiring Laws Continuance Act, 1870.

2. The Acts mentioned in column one of the schedule to this Act, in so far as they are temporary in their duration, shall, to the extent in column two of the said schedule mentioned, be continued until the times respectively specified in column five of the said schedule, and any enactments amending or affecting the enactments continued by this Act shall, in so far as they are temporary in their duration, be continued in like manner.

## SCHEDULE.

1. Original Acts.	2. How far continued.	3. Amending Acts.	4. Time of Expiration of temporary Provisions.	5. Continued until
(1) 5 & 6 Will. 4. c. 27. Linen, Hempen, Cotton, and other Manufactures (Ireland).	The whole Act -	3 & 4 Vict. c. 91. 5 & 6 Vict. c. 68. 7 & 8 Vict. c. 47. 30 & 31 Vict. c. 60.	13th August 1870 - (32 & 33 Vict. c. 85.)	13th August 1871, and end of then next ses- sion.
(2) 2 & 3 Vict. c. 74. Societies, unlawful (Ireland).	The whole Act -	11 & 12 Vict. c. 89.	7th July 1870, and end of then next session. (32 & 33 Vict. c. 85.)	7th July 1871, and end of then next session.
(3) 3 & 4 Vict. c. 89. Poor Rates, Stock in Trade Exemp- tion.	The whole Act -	- - -	1st October 1870, and end of then next ses- sion. (32 & 33 Vict. c. 85.)	1st October 1871, and end of then next ses- sion.

1. Original Acts.	2. How far continued.	3. Amending Acts.	4. Time of Expiration of temporary Provisions.	5. Continued until
(4) 4 & 5 Vict. c. 30. Survey of Great Britain.	The whole Act -	33 & 34 Vict. c. 13.	31st December 1870, and end of then next session. (32 & 33 Vict. c. 85.)	31st December 1871, and end of then next session.
(5) 4 & 5 Vict. c. 59. Application of High- way Rates to Turnpike Roads.	The whole Act -	- - -	1st October 1870, and end of then next ses- sion. (28 & 29 Vict. c. 119.)	1st October 1871, and end of then next ses- sion.
(6) 5 & 6 Vict. c. 123. Lunatic Asylums (Ireland).	The whole Act -	- - -	1st August 1870, and end of then next ses- sion. (32 & 33 Vict. c. 85.)	1st August 1871, and end of then next ses- sion.
(7) 10 & 11 Vict. c. 32. Landed Property Improvement (Ireland).	As to powers of commissioners.	13 & 14 Vict. c. 31. 29 & 30 Vict. c. 40.	1st January 1870, and end of then next ses- sion. (32 & 33 Vict. c. 85.)	1st January 1871, and end of then next ses- sion.
(8) 10 & 11 Vict. c. 90. Poor Laws (Ireland).	As to appoint- ment of com- missioners.	14 & 15 Vict. c. 68.	23d July 1870, and end of then next session. (32 & 33 Vict. c. 85.)	23rd July 1871, and end of then next session.
(9) 10 & 11 Vict. c. 98. Ecclesiastical Juris- diction.	As to provisions continued by 21 & 22 Vict. c. 50.	- - -	1st August 1870, and end of then next ses- sion. (32 & 33 Vict. c. 85.)	1st August 1871, and end of then next ses- sion.
(10) 11 & 12 Vict. c. 32. County Cess (Ire- land).	The whole Act -	20 & 21 Vict. c. 7.	1st August 1870, and end of then next ses- sion. (32 & 33 Vict. c. 85.)	1st August 1871, and end of then next ses- sion.
(11) 11 & 12 Vict. c. 107. Sheep and Cattle Diseases.	The whole Act as to Ireland.	16 & 17 Vict. c. 62. 29 & 30 Vict. c. 4. (Ire- land.) 29 & 30 Vict. c. 15. 33 & 34 Vict. c. 36.	20th August 1869, and end of then next ses- sion. (31 & 32 Vict. c. 111.)	20th August 1871, and end of then next ses- sion.
(12) 14 & 15 Vict. c. 104. Episcopal and Ca- pitular Estates Management.	The whole Act -	17 & 18 Vict. c. 116. 22 & 23 Vict. c. 46. 23 & 24 Vict. c. 124.	1st January 1870, and end of then next ses- sion. (32 & 33 Vict. c. 85.)	1st January 1871, and end of then next ses- sion.
(13) 17 & 18 Vict. c. 102. Corrupt Practices Prevention.	The whole Act -	21 & 22 Vict. c. 87. 26 & 27 Vict. c. 29.	8th June 1870, and end of then next session. (32 & 33 Vict. c. 85.)	8th June 1871, and end of then next session.

1. Original Acts.	2. How far continued.	3. Amending Acts.	4. Time of Expiration of temporary Provisions.	5. Continued until
(14) 17 & 18 Vict. c. 117. Encumbered Estates (West Indies).	As to powers of the commis- sioners.	21 & 22 Vict. c. 96. 25 & 26 Vict. c. 45. 27 & 28 Vict. c. 108.	2nd August 1870 - (31 & 32 Vict. c. 111.)	31st March 1872 inclu- sive.
(15) 19 & 20 Vict. c. 36. Preservation of the Peace (Ireland).	The whole Act -	20 & 21 Vict. c. 7. 28 & 29 Vict. c. 118.	1st July 1870, and end of then next session. (32 & 33 Vict. c. 85.)	1st July 1871, and end of then next session.
(16) 23 & 24 Vict. c. 19. Dwellings for La- bouring Classes (Ireland).	The whole Act -	- - -	15th May 1870, and end of then next session. (23 & 24 Vict. c. 19.)	15th May 1871, and end of then next session.
(17) 24 & 25 Vict. c. 109. Salmon Fishery (England) Act.	As to appoint- ment of inspec- tors, s. 31.	- - -	1st October 1870, and end of then next ses- sion. (32 & 33 Vict. c. 85.)	1st October 1871, and end of then next ses- sion.
(18) 25 & 26 Vict. c. 97. Salmon Fisheries (Scotland).	As to the powers of commis- sioners, &c.	26 & 27 Vict. c. 50. 27 & 28 Vict. c. 118.	1st January 1870, and end of then next ses- sion. (32 & 33 Vict. c. 85.)	1st January 1871, and end of then next ses- sion.
(19) 26 & 27 Vict. c. 105. Promissory Notes.	The whole Act -	- - -	28th July 1870, and end of then next session. (32 & 33 Vict. c. 85.)	28th July 1871, and end of then next session.
(20) 27 & 28 Vict. c. 20. Promissory Notes and Bills of Ex- change (Ireland).	The whole Act -	- - -	13th May 1870, and end of then next session. (32 & 33 Vict. c. 85.)	13th May 1871, and end of then next session.
(21) 27 & 28 Vict. c. 9. Malt for Animals.	The whole Act -	- - -	28th April 1870, and end of then next ses- sion. (32 & 33 Vict. c. 85.)	28th April 1871, and end of then next ses- sion.
(22) 27 & 28 Vict. c. 92. Public Schools.	The whole Act -	- - -	1st August 1870, and end of then next ses- sion. (32 & 33 Vict. c. 85.)	1st August 1871, and end of then next ses- sion.
(23) 28 & 29 Vict. c. 46. Militia Ballots Sus- pension.	The whole Act -	- - -	1st October 1870, and end of then next ses- sion. (32 & 33 Vict. c. 85.)	1st October 1871, and end of then next ses- sion.
(24) • 28 & 29 Vict. c. 66. Charging of Malt Duty by Weight.	The whole Act -	- - -	29th June 1870, and end of then next ses- sion. (32 & 33 Vict. c. 85.)	29th June 1871, and end of then next session.



1. Original Acts.	2. How far continued.	3. Amending Acts.	4. Time of Expiration of temporary Provisions.	5. Continued until
(25) 28 & 29 Vict. c. 88. Locomotives on Roads.	The whole Act -	- - -	1st September 1870, and end of then next session. (32 & 33 Vict. c. 85.)	1st September 1871, and end of then next session.
(26) 28 & 29 Vict. c. 121. Salmon Fishery Act (1861) Amendment.	As to appointment of commissioners.	- - -	- - - -	1st October 1871, and end of then next session.
(27) 29 & 30 Vict. c. 52. Prosecution Expenses.	The whole Act -	- - -	23d July 1870, and end of then next session. (32 & 33 Vict. c. 85.)	23d July 1871, and end of then next session.
(28) 30 & 31 Vict. c. 126. Railway Companies (Scotland).	As to protection of rolling stock, s. 4.	- - -	1st September 1870 - (31 & 32 Vict. c. 79.)	1st September 1871, and end of then next session.
(29) 30 & 31 Vict. c. 127. Railway Companies.	As to protection of rolling stock, s. 4.	- - -	1st September 1870 - (31 & 32 Vict. c. 79.)	1st September 1871, and end of then next session.
(30) 30 & 31 Vict. c. 141. Master and Servant.	The whole Act -	- - -	20th August 1870, and end of then next session. (32 & 33 Vict. c. 85.)	20th August 1871, and end of then next session.
(31) 31 & 32 Vict. c. 32. Endowed Schools.	The whole Act -	- - -	1st August 1870, and end of then next session. (32 & 33 Vict. c. 85.)	1st August 1871, and end of then next session.
(32) 31 & 32 Vict. c. 76. Militia Pay.	The whole Act -	32 & 33 Vict. c. 66.	31st July 1870 - (32 & 33 Vict. c. 66.)	31st July 1871, inclusive.
(33) 32 & 33 Vict. c. 61. Trades Unions Funds Protection.	The whole Act -	- - -	31st August 1870 -	31st August 1871, and end of then next session.

## CHAP. 104.

*The Joint Stock Companies Arrangement Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Where compromise proposed Court of Chancery may order a meeting of creditors, &c. to decide as to such compromise.*
3. *Interpretation.*
4. *Act and Companies Act to be read together.*

An Act to facilitate compromises and arrangements between creditors and shareholders of Joint Stock and other Companies in Liquidation.

(10th August 1870.)

WHEREAS it is expedient to amend the law relating to the liquidation of joint stock and other companies :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as "The Joint Stock Companies Arrangement Act, 1870."

2. Where any compromise or arrangement shall be proposed between a company which is, at the time of the passing of this Act or afterwards, in the course of being wound up, either voluntarily or by or under the supervision of the Court, under the Companies Acts 1862 and

1867, or either of them, and the creditors of such company, or any class of such creditors, it shall be lawful for the Court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the court shall direct, and if a majority in number representing three fourths in value of such creditors or class of creditors present either in person or by proxy at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said company.

3. The word "Company" in this Act shall mean any company liable to be wound up under "The Companies Act, 1862."

4. This Act shall be read and construed as part of "The Companies Act, 1862."

#### CHAP. 105.

#### *Truck Commission Act, 1870.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Short title of Act.*
2. *Extent of Act.*
3. *Appointment of Commissioners.*
4. *Vacancy in offices of Commissioners.*
5. *Payment of Commissioners.*
6. *Powers of Commissioners.*
7. *Indemnity to witnesses.*
8. *Penalty for false swearing, &c.*
9. *Expenses.*
10. *Protection to persons appointed to conduct inquiries.*
11. *Service of a summons.*
12. *Protection to persons publishing true accounts of evidence.*
13. *Limitation of actions.*

An Act for appointing a Commission to inquire into the alleged prevalence of the Truck System, and the disregard of the Acts of Parliament prohibiting such system, and for giving such Commission the powers necessary for conducting such Inquiry.

(10th August 1870.)

WHEREAS an Act was passed in the session held in the first and second years of the reign of King William the Fourth, chapter thirty-seven, intituled "An Act to prohibit the payment in " certain trades of wages in goods or otherwise " than in the current coin of the realm," and the object of such Act is, as its title imports, to prohibit throughout Great Britain the payment in certain trades of wages in goods or otherwise than in money, which payment of wages in goods is commonly called the truck system :

And whereas it is alleged that in certain parts of Great Britain the provisions of the said Act, and divers other provisions in Acts passed for the prevention of the said truck system, are systematically disregarded, and it is expedient that inquiry should be made by Commissioners to be appointed by Parliament into the truth of the said allegations, with power to such Commissioners to suggest any improvement to be made in the law in respect of the matters aforesaid :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the "Truck Commission Act, 1870."

2. This Act shall not extend to Ireland.

3. Charles Synge Christopher Bowen, esquire, barrister-at-law, and Alexander Craig Sellar, esquire, advocate, shall be Commissioners for the purpose of inquiring into and reporting to one of Her Majesty's Principal Secretaries of State, upon the operation of the above-mentioned Act, and of all other Acts or provisions of Acts prohibiting the truck system, with power to investigate any offences against such Acts which have occurred within the period of two years immediately preceding the passing of this Act, and to make such report on the subject of the truck system, and of the existing laws in relation thereto, as they shall deem proper and useful.

Any report made in pursuance of this Act shall be laid before Parliament within one calendar month next after such report is made if Parliament be then sitting, or if Parliament be not then sitting, then within one calendar month next after the then next meeting of Parliament.

4. As often as any vacancy occurs in the office of any Commissioner acting under this Act by reason of such Commissioner dying, resigning, declining or becoming incapable to act, one of Her Majesty's Principal Secretaries of State may from time to time fill up such vacancy.

5. There shall be paid to each of the said Commissioners out of moneys to be provided by Parliament such remuneration for their services under this Act as the Commissioners of the Treasury may direct, and the said Commissioners may employ such secretary, clerks, and other officers at such salaries, to be paid out of moneys to be provided by Parliament, as may be approved of by the said Commissioners of the Treasury.

6. The Commissioners shall have for the purposes of this inquiry to be instituted by them in pursuance of this Act all such powers, rights, and

privileges as are vested in any of Her Majesty's superior courts, or in any judge thereof, or in the Court of Session in Scotland, or any judge thereof, on the occasion of any action or suit, in respect of the following matters :

- (a.) The enforcing the attendance of witnesses, and examining them on oath, affirmation, or otherwise, as they or he may think fit :
- (b.) The compelling the production of documents :
- (c.) The punishing persons guilty of contempt :
- (d.) The ordering an inspection of any real or personal property :

And a summons under the hand or hands of one or more of the Commissioners may be substituted for and shall be equivalent to any form of process capable of being issued at law in any action or suit for enforcing the attendance of witnesses, or compelling the production of documents.

Any warrant of committal to prison issued for the purpose of enforcing the powers conferred by this section shall be under the hand of one or more of the Commissioners, and shall specify the prison to which the offender is to be committed, and shall not authorise the imprisonment of any offender for a period exceeding three months.

For the purposes of this Act the Commissioners or either of them shall have power to enter and view any premises.

All superintendents of police, chief constables, headboroughs, gaolers, constables, and bailiffs shall and they are required to give their aid and assistance to the said Commissioners in the execution of their office.

The gaoler or other chief officer of any prison refusing to receive into his prison any prisoner committed thereto in pursuance of this Act shall incur a penalty not exceeding five pounds, to be recovered summarily for every day during which such refusal continues.

Every examination of witnesses under this Act shall be conducted in public, and due notice shall be given of the time and place of holding the same, but with power to the Commissioners to adjourn any meeting from any one place or time to another as occasion may require.

Any one Commissioner may hold inquiries for the purpose of this Act sitting alone, and exercise singly all the powers which by this Act may, when the two Commissioners are sitting together, be exercised by both or either of them, except only the power of punishing persons guilty of contempt, which power shall not be exercised by one Commissioner sitting alone, unless by order of one of Her Majesty's Principal Secretaries of State.

7. Any person examined as a witness in an inquiry under this Act who in the opinion of the Commissioners makes a full and true disclosure touching all the matters in respect of which he is

examined, shall receive a certificate under the hand of such Commissioners stating that the witness has upon his examination made a full and true disclosure as aforesaid; and if any civil or criminal proceeding be at any time thereafter instituted against such witness in respect of any matter touching which he has been so examined, the tribunal before which such proceeding is instituted shall, on the production and proof of the certificate, stay the proceeding, and may in its discretion award to such witness any costs he may have been put to by the institution of the proceeding; provided that no evidence taken under this Act shall be admissible against any person in any civil or criminal proceeding whatever, except in the case of a witness who may be accused of having given false evidence before the Commissioners conducting the inquiry under this Act.

8. Every person who, upon examination upon oath or affirmation in any inquiry under this Act, wilfully gives false evidence, shall be liable to the penalties of perjury.

9. The reasonable expenses incurred by any person who may be summoned to appear to give evidence in any inquiry under this Act, according to a scale to be approved by the Commissioners of Her Majesty's Treasury, may be allowed and paid to such person upon a certificate under the hands or hand of both or one of the Commissioners conducting the inquiry under this Act, and shall be deemed to be expenses incurred by

the Commissioners for the purposes of their Commission, and, together with all incidental expenses of the inquiry directed by this Act, shall be paid by the said Commissioners of the Treasury out of moneys provided by Parliament.

10. The Commissioners in conducting an inquiry under this Act shall have such and the like protection and privileges, in case of any action brought against them for any act done or omitted to be done in the execution of their duty, as is now by law given by any Act or Acts now or hereafter to be in force to justices acting in execution of their office.

11. Service upon any person of a summons under this Act may be made by leaving the summons at his usual or last known place of abode or of business.

12. No person shall be liable to any suit, action, indictment, or proceeding by reason of his publishing a true account of any evidence taken by the Commissioners or of any report of the Commissioners.

13. No action shall be brought against any of the Commissioners appointed to conduct an inquiry under this Act, or any other person whomsoever, for any thing done in the execution of his duty under this Act, unless such action be brought within six calendar months next after the doing of such thing.

#### CHAP. 106.

#### *Sanitary Act (Dublin) Amendment.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Public Works Loan Commissioners may advance to town council a sum not exceeding 350,000l. for purification of Liffey, &c.*
2. *Application of moneys raised under this Act.*
3. *Repayment of advances.*
4. *Payment of expenses incurred in the execution of Act.*
5. *Arrears may be enforced by appointment of a receiver.*

An Act to amend the Sanitary Act, 1866, so far as relates to the city of Dublin.  
(10th August 1870.)

WHEREAS under the provisions of the Sanitary Act, 1866, the right honourable the lord mayor, aldermen, and burgesses of the city of Dublin, acting by the town council of the said city, are

the sewer authority within the said city for the purposes of the said Act and of the Sewage Utilization Act, 1865, and are also the nuisance authority for executing the Nuisance Removal Acts, as the same are made applicable to Ireland by the said Sanitary Act, 1865:

And whereas for the purpose of carrying the said Acts into effect it is necessary that the River

Liffey should be made pure and the main drainage of the said city should be perfected, and that the works necessary for the purposes aforesaid should be executed, and that to defray the expenses which will be incurred in the execution of the said works the Public Works Loan Commissioners, as defined by the Public Works Loan Act, 1853, should advance to the said town council moneys to the amount, upon the security and in the manner by this Act authorised :

And whereas for the purposes aforesaid it is necessary to amend the Sanitary Act, 1866 :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows ; (that is to say,)

1. The Public Works Loan Commissioners, as defined by the Public Works Loan Act, 1853, may, if they think fit, advance to the said town council of the city of Dublin, upon the security of the rate or fund out of which expenses incurred by the said town council as the sewer and nuisance authority within the said city under the Sanitary Act, 1866, may be defrayed, any sum or sums of money not exceeding in the whole three hundred and fifty thousand pounds, to be applied by the said town council in the execution of the works necessary for the purpose of purifying the said River Liffey and completing the main drainage of the said city of Dublin.

2. The said town council of the city of Dublin shall apply all moneys raised under the authority of this Act in payment of the expenses incurred in the execution of the said works necessary for the purification of the River Liffey and the completion of the said main drainage of the said city of Dublin and incident thereto, and to or for no other purpose whatsoever.

3. Notwithstanding anything in the Public Works Loan Act, 1853, contained to the contrary, all moneys advanced under the authority of this Act shall be repaid in manner following ; (that is to say,)

So long as any principal money or interest shall remain unpaid the said town council of the city of Dublin shall, in every year, from the date of each advance, pay to the said

Public Works Loan Commissioners such annual sum as shall be equivalent to the sum of five per cent. per annum upon amount of such advance, and such annual sum shall be applied first in payment of interest on the amount remaining unpaid in respect of such advance at the rate of four per cent. per annum, and next in or towards discharge of the principal of such advance :

Every such annual sum shall be paid in two equal half-yearly instalments, the first of such instalments to be paid six months after the date of the advance in respect of which the same shall be payable.

4. The expenses incurred by the said town council of the city of Dublin in carrying this Act into effect, and in repaying all moneys advanced under the authority of the same, shall be deemed to be expenses incurred by the said town council in carrying into effect the said Sanitary Act, 1866, and the Nuisance Removal Acts, and shall be paid out of the same rate or fund and in like manner in every respect.

5. In case the said town council shall not pay any such half-yearly payment as aforesaid within thirty days after the same shall be due, the said Public Works Loan Commissioners may, in addition to any other remedies, enforce payment of the same by the appointment of a receiver, and it shall be lawful for such receiver to apply to the Court of Queen's Bench in Ireland for a writ of mandamus to compel the said town council to make and cause to be levied such rate or rates as they are authorised to make for the purposes of the Sanitary Act, 1866, and the Nuisances Removal Acts, of such amount as shall be sufficient to make good any deficiency in the funds applicable to the payment of such interest, and so from time to time ; and the said court is hereby authorised, on cause duly shown, to order and direct such writ of mandamus to issue, and if and when the same shall be made peremptory, the town council shall and they are hereby authorised and required to make or cause to be levied such rate or rates of such amount, or as near thereto as may be, as shall be sufficient to pay the amount due, and the costs and expenses attending the recovery of the same.

## CHAP. 107.

*Census.*

## ABSTRACT OF THE ENACTMENTS.

1. *Secretary of State to superintend the taking of the census.*
2. *Registrar's sub-districts to be formed into enumerator's divisions.*
3. *Enumerators to be appointed.*
4. *Householders schedules to be left at dwelling-houses. Occupiers to fill up the schedules and sign and deliver them to the enumerator. Penalty for neglect.*
5. *Schedules to be collected from house to house, and corrected if found to be erroneous.*
6. *Enumerators to take an account of houses, &c., and to distinguish the boundaries of parishes, boroughs, &c. Enumerators to deliver their books, with the householders schedules, to the registrar.*
7. *Registrars to verify the enumerators books.*
8. *Superintendent registrars to examine the enumerators books, and return them to the Registrar General.*
9. *An abstract of returns to be printed, and laid before Parliament.*
10. *Masters, &c. of gaols, &c. to be appointed enumerators of the inmates thereof.*
11. *Overseers, peace officers, and relieving officers of unions formed under 4 & 5 W. 4. c. 76. bound to act as enumerators.*
12. *Returns of persons travelling or on shipboard, or not in houses.*
13. *Table of allowances to enumerators and others.*
14. *Payments to be certified to the registrar general.*
15. *Manner in which the payments shall be made to persons employed in execution of this Act in England.*
16. *Penalty on persons for wilful default.*
17. *Penalty for refusing information or giving false answers.*
18. *Recovery of penalties.*
19. *Interpretation of terms.*

An Act for taking the Census of Eng-  
land.  
(10th August 1870.)

WHEREAS it is expedient to take the census of England in the year one thousand eight hundred and seventy-one:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. One of Her Majesty's Principal Secretaries of State shall have the care of superintending the taking of the census, and shall cause to be prepared and printed, for the use of the persons to be employed in taking it, such forms and instructions as he shall deem necessary, and the Registrar General shall issue all such forms and instructions to the persons for whose use they shall be intended; and all the expenses which shall be incurred by authority of such Secretary of State, with the consent of the Commissioners of the Treasury, under this Act, shall be paid out of such moneys as shall be provided by Parliament for that purpose.

2. Every registrar's sub-district in England shall be formed into enumerator's divisions according to instructions to be prepared by or under the direction of such Secretary of State,

who shall cause a sufficient number of copies of such instructions to be sent to every registrar of births and deaths in England; and the registrars, with all convenient speed, shall divide the several sub-districts into enumerator's divisions according to such instructions, and subject in each case to be revised by the superintendent registrar, and to the final revision and approval of the said Registrar General.

3. The several registrars of births and deaths in England shall make and return to their respective superintendent registrars a list containing the names and places of abode of a sufficient number of persons, duly qualified according to instructions to be prepared by or under the direction of such Secretary of State, to act as enumerators within their several sub-districts, and such persons, when approved of by the superintendent registrar, shall be appointed by him enumerators for taking the census, subject nevertheless to the approval of the said Registrar General; and the registrar, with the approval of the superintendent registrar, shall assign a division to each enumerator, and shall distribute to the several enumerators in his sub-district the forms and instructions which shall have been issued for that purpose by the Registrar General, and shall personally ascertain that each enumerator thoroughly understands the manner in

which the duties required of him are to be performed.

4. Schedules shall be prepared by or under the direction of such Secretary of State for the purpose of being filled up by or on behalf of the several occupiers of dwelling-houses as herein-after provided, with particulars of the name, sex, age, rank, profession or occupation, condition, relation to head of family, and birthplace of every living person who abode in every house on the night of Sunday the second day of April one thousand eight hundred and seventy-one, and also whether any were blind, or deaf and dumb, or imbecile or lunatic; and the registrars in England shall in the course of the week ending on Saturday the first day of April in the year one thousand eight hundred and seventy-one leave or cause to be left at every dwelling-house within their respective sub-districts one or more of the said schedules for the occupier or occupiers thereof or of any part thereof, and upon every such schedule shall be plainly expressed that it is to be filled up by the occupier of such dwelling-house, (or where such dwelling-house is let or sub-let in different stories or apartments, and occupied distinctly by different persons or families, by the occupier of each such distinct story or apartment,) and that the enumerator will collect all such schedules within his division on the Monday then next following; and every occupier of any dwelling-house, or of any distinct story or apartment in any dwelling-house, with or for whom any such schedule shall have been left as aforesaid, shall fill up the said schedule to the best of his or her knowledge and belief, so far as relates to all persons dwelling in the house, story, or apartment occupied by him or her, and shall sign his or her name thereunto, and shall deliver the schedule so filled up, or cause the same to be delivered, to the enumerator when required so to do; and every such occupier who shall wilfully refuse or without lawful excuse neglect to fill up the said schedule to the best of his or her knowledge and belief, or to sign and deliver the same as herein required, or who shall wilfully make, sign, or deliver, or cause to be made, signed, or delivered, any false return of all or any of the matters specified in the said schedule, shall forfeit a sum not more than five pounds nor less than twenty shillings.

5. The enumerators shall visit every house in their respective divisions, and shall collect all the schedules so left within their division from house to house, so far as may be possible, on Monday the third day of April in the year one thousand eight hundred and seventy-one, and shall complete such of the schedules as upon delivery thereof to them shall appear to be defective, and correct such as they shall find to be

erroneous, and shall copy the schedules, when completed and corrected, into books to be provided them for that purpose, and shall add thereunto an account, according to the best information which they shall be able to obtain, of all the other persons living within their division who shall not be included in the schedules so collected by them.

6. Every enumerator shall also take an account of the occupied houses, and of the houses then building and therefore uninhabited, and also of all other uninhabited houses within his division, and shall also take an account of all such particulars herein-before mentioned, and none others, according to the forms and instructions which may be issued under this Act; and in the book into which he shall have copied the householders schedules and other particulars, as herein-before directed, each enumerator shall distinguish the several parishes within his division, or such parts thereof as shall be within his division, and shall also distinguish those parishes or parts of parishes within his division which are within the limits of any city or borough returning or contributing to return a member or members to serve in Parliament, or of any incorporated city or borough, or of any town within the jurisdiction of a local board, or of any commissioners intrusted by a local Act with draining, cleansing, lighting, or improving the town, or of any ecclesiastical district, or of any area prescribed in that behalf by the instructions, and shall deliver such book to the registrar of the sub-district, together with the householders schedules collected by him, and shall sign a form or declaration to the effect that the said book has been truly and faithfully filled up by him, and that to the best of his knowledge the same is correct, which form of declaration shall be prepared by or under the direction of such Secretary of State, and issued by the Registrar General with the forms and instructions aforesaid.

7. The registrar to whom such enumerators books shall be delivered shall examine the same, and shall satisfy himself that the instructions in each case have been punctually fulfilled, and if not shall cause any defect or inaccuracy in the said book to be supplied so far as may be possible; and when the books shall have been made as accurate as is possible the registrar shall deliver them to the superintendent registrar of his sub-district, and thereafter shall transmit the householders schedules to the Registrar General.

8. The superintendent registrar shall examine all the books which shall be so delivered to him, and shall satisfy himself how far the registrars have duly performed the duties required of them

by this Act, and shall cause any inaccuracies which he shall discover in such books to be corrected so far as may be possible, and shall return on or before the first day of May one thousand eight hundred and seventy-one, or such other day as may be fixed by the Registrar General, all the books which shall have been delivered to him to the Registrar General for the use of such Secretary of State.

9. The Secretary of State shall cause an abstract to be made of the said returns; and such abstract shall be printed, and laid before both Houses of Parliament within twelve calendar months next after the first day of June in the year one thousand eight hundred and seventy-one, if Parliament be sitting, or if Parliament be not sitting, then within the first fourteen days of the Session then next ensuing.

10. The master or keeper of every gaol, prison, or house of correction, workhouse, hospital, or lunatic asylum, and of every public or charitable institution, which shall be determined upon by the said Registrar General, shall be the enumerator of the inmates thereof, and shall be bound to conform to such instructions as shall be sent to him by the authority of one of the said Secretaries of State for obtaining the returns required by this Act, so far as may be practicable, with respect to such inmates.

11. The overseers of the poor in every parish in England, and the constables, tithingmen, headboroughs, or other peace officers for such parishes, and the relieving officers in any union or parish not in union with a board of guardians acting under the provisions of an Act passed in the fifth year of King William the Fourth, intituled "An Act for the amendment and better administration of the laws relating to the Poor in England and Wales," or the Acts amending the same, shall be bound to act as enumerators under this Act within their respective parishes and unions, if required so to act by one of the said Secretaries of State, and where they shall so act shall be entitled to allowances as enumerators under the provisions of this Act; and every such overseer, relieving officer, constable, tithingman, headborough, and other peace officer who shall refuse or wilfully neglect so to act, and duly to perform the duties required of the said enumerators by this Act, shall for every such offence forfeit a sum not more than ten pounds nor less than five pounds.

12. The Secretary of State shall obtain, by such ways and means as shall appear to him best adapted for the purpose, returns of the particulars required by this Act with respect to all persons who during the said night of Sunday the second

day of April were travelling or on shipboard, or for any other reason were not abiding in any house of which account is to be taken by the enumerators and other persons as aforesaid, and shall include such returns in the abstract to be made by him as aforesaid.

13. One of the said Secretaries of State shall cause to be prepared a table of allowances to be made to the several enumerators, registrars, superintendent registrars, and other persons in England employed in the execution of this Act; and such table, when approved by the Commissioners of Her Majesty's Treasury, shall be laid before both Houses of Parliament on or before the first day of March one thousand eight hundred and seventy-one, if Parliament be sitting, or if Parliament be not sitting, then within the first fourteen days of the session then next ensuing.

14. The superintendent registrar of every district in England shall within one calendar month next after the taking of the census certify to the said Registrar General the total amount of the allowances to which he, and the registrars, enumerators, and other persons in that district, are respectively entitled according to the said table.

15. The Commissioners of Her Majesty's Treasury shall, through the Registrar General, pay to each superintendent registrar, out of the moneys provided by Parliament for that purpose, the whole amount of the allowances to which the said superintendent registrar, and the registrars, enumerators, and other persons in each district, are severally entitled according to the said table; and each superintendent registrar shall pay over to the registrars in his district the allowances to which they the said registrars are entitled, and shall also pay over or cause to be paid over to the enumerators and other persons in his district the allowances to which they are severally entitled according to the said table; and the receipts to be given by the enumerators and other persons and registrars for payment of their said allowances shall be delivered to the superintendent registrar, who shall transmit the same, together with the receipt for his own allowance, to the Registrar General: Provided always, that no such payment shall be made to any enumerator or other person who shall be required to act as an enumerator under this Act, but upon production of a certificate under the hand of the registrar that the duties required of such enumerator or other person acting as enumerator by this Act have been faithfully performed, and the like certificate shall be required under the hand of the superintendent registrar with respect to the registrar before any payment shall be made to the registrar, and the like certificate under the hand of the said



Registrar General with respect to the superintendent registrar before any payment shall be made to the superintendent registrar.

16. Every superintendent registrar and registrar, and every enumerator and other person who is bound under this Act if required to act as enumerator, making wilful default in any of the matters required of them respectively by this Act, or making any wilfully false declaration, shall for every such wilful default or false declaration forfeit a sum not exceeding five pounds nor less than two pounds.

17. The enumerators and other persons employed in the execution of this Act shall be authorised to ask all such questions as shall be directed in any instructions to be prepared by or under the direction of the said Secretary of State which shall be necessary for obtaining the returns required by this Act; and every person refusing

to answer or wilfully giving a false answer to such questions or any of them shall for every such refusal or wilfully false answer forfeit a sum not exceeding five pounds nor less than twenty shillings.

18. All penalties imposed by this Act shall be recovered in a summary manner before two justices of the peace having jurisdiction in the county or place where the offence is committed in the manner prescribed by law in this behalf.

19. In the construction of this Act the term *pariah* means a place for which a separate poor rate is or can be made, and has in the metropolis the same meaning as in "The Metropolis Management Act, 1855," and the words "*dwelling-house*" shall include all buildings and tenements of which the whole or any part shall be used for the purpose of human habitation.

## CHAP. 108.

### *Census (Scotland).*

#### ABSTRACT OF THE ENACTMENTS.

1. *Secretary of State to superintend census.*
2. *Copy of this Act to be sent to every sheriff in Scotland.*
3. *Registrars districts to be formed into enumerators divisions.*
4. *Enumerators to be appointed.*
5. *Householders schedules to be left at dwelling-houses. Occupiers to fill up the schedules, and sign and return them to the enumerator. Penalty for neglect.*
6. *Schedules to be collected from house to house, and corrected, if found to be erroneous.*
7. *Enumerators to take an account of houses, &c., and to distinguish the boundaries of parishes and burghs. Enumerators to deliver their books, with the householders schedules, to the registrar.*
8. *Registrars to verify the enumerators books, and deliver them to the sheriff, &c.*
9. *Returns to be given to the sheriffs of counties and chief magistrates of burghs.*
10. *Sheriffs of counties and chief magistrates of burghs to receive the returns, and transmit them to the Registrar General.*
11. *An abstract of returns to be printed and laid before Parliament.*
12. *Masters, &c. of gaols, &c. to be appointed enumerators of the inmates thereof.*
13. *Returns of houseless poor and of persons travelling or on shipboard.*
14. *Table of allowances to enumerators and other persons employed.*
15. *Payments to be certified to the Registrar General.*
16. *Manner in which the payments shall be made to persons employed in execution of this Act.*
17. *Penalty for wilful default.*
18. *Penalty for refusing information or giving false answers.*
19. *Recovery and application of penalties.*
20. *Interpretation of terms.*

**An Act for taking the Census in Scotland.**  
(10th August 1870.)

WHEREAS it is expedient to take the census of Scotland in the year one thousand eight hundred and seventy-one :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. One of Her Majesty's Principal Secretaries of State shall have the care of superintending the taking of the census of Scotland, and shall cause to be prepared and printed, for the use of the persons to be employed in taking it, such forms and instructions as he shall deem necessary, and the Registrar General for Scotland shall issue all such forms and instructions to the persons for whose use they shall be intended ; and all the expenses which shall be incurred by authority of such Secretary of State, subject to the sanction of the Commissioners of Her Majesty's Treasury, under this Act, shall be paid out of such moneys as shall be provided by Parliament for that purpose.

2. The Registrar General for Scotland shall send a printed copy of this Act to the sheriff of every county in Scotland, and to the chief magistrate of every royal burgh, and of every parliamentary burgh having magistrates, in Scotland.

3. Every registrar's district in Scotland shall be formed into enumerators divisions according to instructions to be prepared by or under the direction of such Secretary of State, who shall cause a sufficient number of copies of such instructions to be sent to every registrar of births, deaths, and marriages in Scotland ; and the registrars, with all convenient speed, shall divide the several districts into enumerators divisions according to such instructions, and subject in each case to be revised by the sheriff of the county or the magistrates of the burgh, as the case may be.

4. The several registrars of births, deaths, and marriages in Scotland shall make and return to the sheriff of the county, or to the chief magistrate of the burgh, as the case may be, a list containing the names and places of abode of a sufficient number of persons, duly qualified according to instructions to be prepared by or under the direction of such Secretary of State, to act as enumerators within their several districts, and such persons, when approved of by the sheriff or magistrates, shall be appointed by the registrar, by any writing under his hand, enumerators for taking the census ; and the registrar,

with the like approval, shall assign a division to each enumerator, and shall distribute to the several enumerators in his district the forms and instructions which shall have been issued for that purpose by the Registrar General, and shall personally ascertain that each enumerator thoroughly understands the manner in which the duties required of him are to be performed.

5. Schedules shall be prepared by or under the direction of such Secretary of State for the purpose of being filled up by or on behalf of the several occupiers in dwelling-houses as herein-after provided, with particulars of the name, sex, age, rank, profession or occupation, condition, relation to head of family, and birthplace of every living person who abode in every house on the night of Sunday the second day of April one thousand eight hundred and seventy-one, and also whether any were blind, or deaf and dumb, or imbecile or lunatic, and also whether any, and how many, of such persons, being of the age of from five to thirteen years, were in regular attendance at school, or were in the receipt of education at home under tutors or governesses, and the registrars in Scotland shall in the course of the week ending on Saturday the first day of April in the year one thousand eight hundred and seventy-one leave or cause to be left at every dwelling-house within their respective districts one or more of the said schedules for the occupier or occupiers thereof or of any part thereof, and upon every such schedule shall be plainly expressed that it is to be filled up by the occupier of such dwelling-house, (or where such dwelling-house is let in different stories or apartments, and occupied distinctly by different persons or families, by the occupier of each such distinct story or apartment,) and that the enumerator will collect all such schedules within his division on the Monday then next following ; and every occupier of any dwelling-house, or of any distinct story or apartment in any dwelling-house, with or for whom any such schedule shall have been left as aforesaid, shall fill up the said schedule to the best of his or her knowledge and belief, so far as relates to all persons dwelling in the house, story, or apartment occupied by him or her, and shall sign his or her name thereunto, and shall deliver the schedule so filled up, or cause the same to be delivered, to the enumerator when required so to do ; and every such occupier who shall wilfully refuse or without lawful excuse neglect to fill up the said schedule to the best of his or her knowledge and belief, or to sign and deliver the same as herein required, or who shall wilfully make, sign, or deliver, or cause to be made, signed, or delivered, any false return of all or any of the matters specified in the said schedule, shall forfeit a sum not more than five pounds nor less than twenty shillings.

6. The enumerators shall visit every house in their respective divisions, and shall collect all the schedules so left within their division from house to house, so far as may be possible, on Monday the third day of April in the year one thousand eight hundred and seventy-one, and shall complete such of the schedules as upon delivery thereof to them shall appear to be defective, and correct such as they shall find to be erroneous, and shall copy the schedules, when completed and corrected, into books to be provided them for that purpose, and shall add thereunto an account, according to the best information which they shall be able to obtain, of all the other persons living within their division who shall not be included in the schedules so collected by them.

7. Every enumerator shall also take an account of the occupied houses, and of the houses then building and therefore uninhabited, and also of all other uninhabited houses within his division, stating the number of rooms, including the kitchen, if any, as a room, having a window or windows, not being windows with a borrowed light, in each dwelling-house, and shall also take an account of all such particulars herein-before mentioned, and none other, as by the forms and instructions which may be issued under this Act they may be directed to inquire into; and in the book into which he shall have copied the householders schedules and other particulars, as herein-before directed, each enumerator shall distinguish the several parishes and places maintaining their own poor within his division, or such parts thereof as shall be within his division, and shall also distinguish those parishes and places or parts of parishes and places within his division which are within the limits of any city or burgh returning or contributing to return a member or members to serve in Parliament, or any royal burgh or any burgh in which either of the General Police and Improvement Acts, thirteenth and fourteenth Victoria, chapter thirty-three, or twenty-fifth and twenty-sixth Victoria, chapter one hundred and one, has been adopted, and shall deliver such book to the registrar of the district, together with the householders schedules collected by him, and shall sign a form or declaration to the effect that the said book has been truly and faithfully filled up by him, and that to the best of his knowledge the same is correct so far as may be known, which form of declaration shall be prepared by or under the direction of such Secretary of State, and issued by the Registrar General with the forms and instructions aforesaid.

8. The registrar to whom such enumeration book shall be delivered shall examine the same, and shall satisfy himself that the instructions in each case have been punctually fulfilled, and if

not shall cause any defect or inaccuracy in the said book to be supplied so far as may appear possible; and when the books shall have been made as accurate as is possible the registrar shall deliver them to the sheriff of the county or the chief magistrate of the burgh, as the case may be, as herein-after provided.

9. The sheriff of every county and the chief magistrate of every royal or parliamentary burgh in Scotland shall appoint a time or times, which shall not be earlier than the eighth nor later than the twenty-second day of April one thousand eight hundred and seventy-one, for the registrars of districts within their respective jurisdictions to attend at their respective offices, or such other places as they may appoint, with the returns to be made under this Act, of which times and places intimation shall be given to the registrars in such manner as shall be directed by the sheriffs and magistrates respectively, who shall then and there receive from the registrars the returns to be made as aforesaid, and cause every registrar to make a declaration to the effect that the said account has been truly and faithfully taken, and that to the best of his knowledge the same is correct; and the sheriffs and magistrates, if they see cause, may examine the registrars touching any of the matters to which the returns relate, and shall thereafter direct the clerks of their respective jurisdictions to endorse the same (if not previously endorsed) with the name of the county and district thereof wherein the parish or place therein mentioned is situate, or otherwise (where any of the said sheriffs shall think proper) they shall direct the registrar to verify the said returns before any justice of the peace of their respective counties, and thereafter to transmit the same previously to the said twenty-second day of April in any convenient manner to the said sheriffs, who shall direct the same to be endorsed as aforesaid.

10. The sheriffs of counties and the chief magistrates of royal or parliamentary burghs in Scotland shall, on or before the third day of May one thousand eight hundred and seventy-one, transmit the several original enumeration books by them received from the registrars (together with a list of the parishes and places within their respective counties and burghs from whence no returns have been made to them) to the office of the Registrar General for Scotland for the use of the Secretary of State: Provided always, that the Registrar General may empower the said sheriffs or chief magistrates, or any of them, on a special application to that effect, to retain the said enumeration books for any period not later than the fifteenth day of May of the said year.

11. The Secretary of State shall cause an abstract to be made of the said returns; and

such abstract shall be printed, and laid before both Houses of Parliament within twelve calendar months next after the first day of June in the year one thousand eight hundred and seventy-one, if Parliament be sitting, or if Parliament be not sitting, then within the first fourteen days of the session then next ensuing.

12. The master or keeper of every gaol, prison, or house of correction, workhouse, hospital, or lunatic asylum, and of every public or charitable institution, which shall be determined upon by the said Registrar General, shall be the enumerator of the inmates thereof, and shall be bound to conform to such instructions as shall be sent to him by the authority of one of the said Secretaries of State for obtaining the returns required by this Act, so far as may be practicable, with respect to such inmates.

13. The Secretary of State shall obtain, by such ways and means as shall appear to him best adapted for the purpose, returns of the particulars required by this Act with respect to all houseless persons, and all persons who during the said night of Sunday the second day of April were travelling on shipboard, or for any other reason were not abiding in any house of which account is to be taken by the enumerators and other persons as aforesaid, and shall include such returns in the abstract to be made by him as aforesaid.

14. One of the said Secretaries of State shall cause to be prepared a table of allowances to be made to the several enumerators, registrars, sheriff clerks, town clerks, and other persons in Scotland employed in the execution of this Act; and such table, when approved by the Commissioners of Her Majesty's Treasury, shall be laid before both Houses of Parliament on or before the first day of March one thousand eight hundred and seventy-one, if Parliament be sitting, or if Parliament be not sitting, then within the first fourteen days of the session then next ensuing.

15. The sheriff of every county and the chief magistrate of every royal or parliamentary burgh in Scotland shall, within one calendar month next after the taking of the census, certify to the said Registrar General the total amount of the allowances to which the registrars, enumerators, sheriff clerks, town clerks, and other persons are respectively entitled according to the said table.

16. The sheriffs of counties and the chief magistrates of royal or parliamentary burghs in Scotland shall grant to the sheriff clerks and town clerks respectively, and the several registrars, enumerators, or other persons employed in

the execution of this Act, such allowances as shall have been certified as herein-before provided, together with any necessary expenses incurred by them or any of them in the execution of this Act, and shall order payment thereof to be made by the collector of the land tax for the county or other place out of any money in his hands, and such collector shall pay the same accordingly; and the receipts to be given by the registrars, enumerators, and other persons for payment of their said allowances shall be delivered to the sheriff clerk or town clerk, as the case may be, who shall transmit the same, together with the receipt for his own allowance, to the Registrar General: Provided always, that no such payment shall be made to any enumerator or other person who shall be required to act as an enumerator under this Act, but upon production of a certificate under the hand of the registrar that the duties required of such enumerator or other person acting as enumerator by this Act have been faithfully performed, and the like certificate shall be required under the hand of the sheriff or chief magistrate, as the case may be, with respect to the registrar, before any payment shall be made to him.

17. Every registrar, and every enumerator and other person who shall be required to act as enumerator, so appointed as aforesaid, making wilful default in any of the matters required of them respectively by this Act, or making any wilfully false declaration, shall for every such wilful default or false declaration forfeit a sum not exceeding five pounds nor less than two pounds.

18. The enumerators and other persons employed in the execution of this Act shall be authorised to ask all such questions as shall be directed in any instructions to be prepared by or under the direction of the said Secretary of State which shall be necessary for obtaining the returns required by this Act; and every person refusing to answer or wilfully giving a false answer to such questions or any of them shall for every such refusal or wilfully false answer forfeit a sum not exceeding five pounds nor less than twenty shillings.

19. All offences committed in contravention of this Act shall be prosecuted, and all penalties imposed by this Act shall be recovered in a summary manner, under the provisions of "The Summary Procedure Act, 1864," and every such penalty shall be paid, one half to the informer, and the other half to the collector of the land tax for the county or place for which the judge before whom the penalty is recovered shall have acted, to be by him applied in aid of the expenditure under this Act.

20. The term "sheriff" shall include "sheriff substitute," and the term "dwelling-house" shall include all buildings and tenements of

which the whole or any part shall be used for the purpose of human habitation.

## CHAP. 109.

*The Common Law Procedure Amendment Act, Ireland, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. *Commencement of Act.*
2. *Limitation of Act.*
3. *Short title.*
4. *Dower, writ of Right of dower, and Quare impedit, abolished as real actions, and to be commenced by writ of summons and plaint. Writ and all proceedings thereupon to be same as in ordinary action. Rules and regulations may be made and writs and proceedings framed for the purposes of this section.*
5. *In certain cases judge of superior courts may order cause to be tried in civil bill court.*
6. *Actions for malicious prosecution, &c. brought in superior courts may be remitted to civil bill court by judge.*
7. *Interpretation of terms.*

An Act to abolish certain Real Actions in the Superior Courts of Common Law in Ireland, and further to amend the Procedure in the said Courts; and for other purposes.

(10th August 1870.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

1. This Act shall commence and take effect on the second day of November one thousand eight hundred and seventy.

2. This Act shall apply to Ireland only.

3. This Act may be cited for all purposes as "The Common Law Procedure Amendment Act, Ireland, 1870."

4. No writ of Right of Dower, or writ of Dower unde nihil habet, and no plaint for free-bench or dower in the nature of any such writ, and no Quare impedit, shall be brought after the commencement of this Act in any court whatsoever; but where any such writ, action, or plaint would now lie, either in a superior or any other court, an action may be commenced by "writ of summons and plaint" issuing out of the Superior Courts of Common Law at Dublin, in the same manner as the writ of summons and

plaint in an ordinary action, and in such form as the judge of the said courts respectively shall from time to time think fit to order.

The service of the writ, appearance of the defendant, proceedings in default of appearance, pleadings, judgment, execution, and all other proceedings and costs upon such writ, shall be subject to the rules and practice which the judges of the said courts respectively shall from time to time make and prescribe, and which rules and practice shall be the same, as nearly as may be, as the proceedings in an ordinary action commenced by writ of summons and plaint.

In order to enable the said superior courts and the judges thereof respectively to make rules and regulations, and to frame writs of summons and plaint, and proceedings for the purpose of giving effect to the provisions of this section, the two hundred and thirty-third and two hundred and fortieth sections of "The Common Law Procedure Amendment Act (Ireland), 1853," shall be incorporated with this section, as if those provisions had been severally herein repeated.

5. Where in any action of contract brought or commenced in any of the superior courts of common law at Dublin the claim endorsed on the summons and plaint does not exceed forty pounds, or where such claim, though it originally exceeded forty pounds, is reduced by payment, an admitted set-off, or otherwise, to a sum not exceeding forty pounds, it shall be lawful for the defendant in the action, within eight days from the day upon which the summons and plaint shall have been served upon him, if the whole or part of the demand of the plaintiff be con-

tested, to apply to the court in which the action is brought, or to any judge of the said superior courts in chamber, for an order that such action should be tried in the civil bill court or one of the civil bill courts in which the action might have been commenced; and on the hearing of such application the judge shall, on proof that sufficient notice thereof has been given to the plaintiff or his attorney, unless there be good cause to the contrary, order such action to be tried in such civil bill court at the sessions to be named in such order, and thereupon the plaintiff shall lodge the original summons and plaint, which, if filed, shall be taken off the file for that purpose and delivered to the plaintiff, and the order with the clerk of the peace of the county mentioned in the order, and the cause and all proceedings therein, shall be heard and taken in such civil bill court as if the action had been originally commenced in such court; and the costs of the parties in respect of proceedings subsequent to the order of the judge of the superior court shall be allowed according to the scale of costs in use in the civil bill courts, and the costs of the proceedings previously had in the superior court shall be allowed according to the scale in use in such latter court.

6. Any person against whom an action for malicious prosecution, illegal arrest, illegal distress, assault, false imprisonment, libel, slander, seduction, or other action of tort may be brought in any of the superior courts of common law at Dublin, may, within eight days from the day upon which the summons and plaint shall have been served upon him, apply to the court in which the action is brought, or to any judge of the said superior courts in chamber, (having previously made and filed in the proper office an affidavit, setting forth that the plaintiff has no visible means of paying the costs of the defendant should a verdict not be found for the plaintiff,) for an order that unless the plaintiff shall, within a time to be therein mentioned, give full security for the defendant's costs to the satisfaction of the master of the said court, or satisfy the judge that

he has a cause of action fit to be prosecuted in the superior court, all proceedings in the action shall be stayed, or in the event of the plaintiff being unable or unwilling to give such security, or failing to satisfy the judge as aforesaid, that the cause be remitted for trial in the civil bill court of the division of the county in which the defendant usually resides, at the sessions to be named in such order, and on the hearing of such application the judge shall, on proof that sufficient notice thereof has been given to the plaintiff or his attorney, and if he is satisfied of the truth of the statements in such affidavit, make such order accordingly; and where any such cause shall be remitted for trial in manner aforesaid the plaintiff shall lodge the original summons and plaint, which, if filed, shall be taken off the file for that purpose and delivered to the plaintiff, and the order with the clerk of the peace of the county named in the order, and thereupon the said cause shall be deemed to be and shall be within the jurisdiction of the civil bill court named in such order, and the said court shall have all and the same powers and jurisdiction with respect to the said cause as if the same had been originally within the jurisdiction of the said court and had been commenced by process in the said court; and the costs of the parties in respect of the proceedings subsequent to the order of the judge of the superior court shall be allowed according to the scale of costs in use in the civil bill courts, and the costs of the proceedings in the superior court shall be allowed according to the scale in use in such latter court.

#### 7. In this Act—

The term "clerk of the peace" shall include the acting or deputy clerk of the peace, registrar, or other officer of the county, or recorders courts lawfully discharging the duties of the clerk either in a county, county of a city, or county of a town:

The word "county" shall include a county of a city, a county of a town, a town, a city, a borough, and a riding of a county.

---

### CHAP. 110.

#### *The Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
  2. *Commencement of Act.*
  3. *Limitation of Act.*
  4. *Interpretation of terms.*
-

## PART I.

*Matrimonial Causes and Matters.*

5. *As to suits then pending. Power for judges whose jurisdiction is determined to deliver written judgments.*
6. *Decrees, &c. previously made in any matrimonial matter may be enforced by the Court herein-after mentioned.*
7. *Former matrimonial jurisdiction of ecclesiastical courts to be exercised by the Court for Matrimonial Causes and Matters.*
8. *Judge of the Court of Probate to be judge of the Court for Matrimonial Causes and Matters.*
9. *In case of illness, &c., provision to supply place of judge.*
10. *Sittings of the Court.*
11. *Seal of the Court.*
12. *Officers of the Court.*
13. *Court to act on the principles of the ecclesiastical courts.*
14. *Judge of the Court for Matrimonial Causes and Matters may sit in chamber.*
15. *Court may cause questions of fact to be tried by a jury.*
16. *Powers of the Court for the trial of questions by a jury.*
17. *Question to be stated, and jury sworn to try it. Court, on trial, to have the same authority as a judge at Nisi Prius.*
18. *Court may make rules and regulations for procedure of practice and fees.*
19. *Fees not to be paid in money, but by stamps.*
20. *Sections 105-107 of 20 & 21 Vict. c. 79. to apply to stamps, &c.*
21. *Advocates, barristers, &c. may practise in the Court.*
22. *All records, books, &c. to be transmitted to the principal registry of the Court.*
23. *Mode of taking evidence.*
24. *Powers to issue commissions, &c.*
25. *Penalties for false evidence.*
26. *Appeal.*
27. *Costs.*
28. *Additional salaries to officers of Court of Probate.*
29. *Jurisdiction of Archbishop of Armagh, &c. as to admission of public notaries transferred to Lord Chancellor.*
30. *Compensation to officers of Court of Faculties.*
31. *Rules and regulations to be laid before Parliament.*

## PART II.

*Amendment of Marriage Law.*

32. *Churches in which marriages may be celebrated.*
  33. *Provisions relating to the solemnization of marriages.*
  34. *Licence of churches.*
  35. *Licences for marriages.*
  36. *Power to bishop to grant special licences.*
  37. *Power to certain persons to grant special licences.*
  38. *Legalization of marriages of persons of different religious persuasions.*
  39. *Avoidance of marriage in wilful violation of the Act.*
  40. *Exemption of priest from penalty.*
  41. *Amendment of section 3. of 26 & 27 Vict. c. 27.*
  42. *This Act and 7 & 8 Vict. c. 81. and 26 Vict. c. 27. to be construed together.*
- Schedules.*

An Act to provide for the administration of the Law relating to Matrimonial Causes and Matters, and to amend the Law relating to Marriages, in Ireland.

(10th August 1870.)

WHEREAS by "The Irish Church Act, 1869," after reciting that it was expedient that the union created by Act of Parliament between the Churches of England and Ireland as then by law established should be dissolved, and that the Church of Ireland, as so separated, should cease to be established by law, it was enacted that on

and after the first day of January one thousand eight hundred and seventy-one the said union created by Act of Parliament between the Churches of England and Ireland should be dissolved, and that the said Church of Ireland, in the said Act referred to as "the said Church," should cease to be established by law; and it was further enacted that on and after the first day of January one thousand eight hundred and seventy-one all jurisdiction, whether contentious or otherwise, of all the ecclesiastical, peculiar, exempt, and other courts and persons in Ireland at the time of the passing of the said Act having any jurisdiction whatsoever exercisable in any cause, suit, or matter, matrimonial, spiritual, or ecclesiastical, or in any way connected with or arising out of the ecclesiastical law of Ireland, should cease, and that on and after the said first day of January one thousand eight hundred and seventy-one the Act of the session of the twenty-seventh and twenty-eighth years of the reign of Her present Majesty, chapter fifty-four, should be repealed, and that on and after the last-mentioned day the ecclesiastical law of Ireland, except in so far as relates to matrimonial causes and matters, should cease to exist as law; and by the said Act it was provided that nothing in any Act, law, or custom should prevent the bishops, the clergy, and laity of the said Church so disestablished as aforesaid, and herein-after in this Act referred to as "the said Church," by such representatives, lay and clerical, and to be elected as they the said bishops, clergy, and laity should appoint, from meeting in general synod or convention, and in such synod or convention framing constitutions and regulations for the general management and good government of the said Church, and property and affairs thereof, and the future representation of the members thereof in diocesan synods, general convention, or otherwise, and also that if at any time it should be shown to the satisfaction of Her Majesty that the bishops, clergy, and laity of the said Church, or the persons who for the time being might succeed to the exercise and discharge of the episcopal functions of such bishops, and the clergy and laity in communion with such persons, had appointed any persons or body to represent the said Church, and to hold property for any of the uses or purposes thereof, it should be lawful for Her Majesty by charter to incorporate such body, with power, notwithstanding the statutes of mortmain, to hold lands to such extent as was in the said Act provided, but not further or otherwise, and also that the Commissioners appointed by said Act might vest in the said representative body such churches as therein provided:

And whereas it is expedient to make provision in regard to suits which may be pending on the said first day of January one thousand eight hundred and seventy-one, and for the enforcing

of decrees and orders made before the said first day of January one thousand eight hundred and seventy-one, and for the due administration of the law in respect of matrimonial causes and matters, and to amend the law relating to marriages in Ireland:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "The Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870."

2. This Act shall commence and have effect on the first day of January one thousand eight hundred and seventy-one.

3. This Act shall apply to Ireland only.

4. In this Act—

The term "bishop of the said Church" shall include any person who for the time being may succeed to the exercise and discharge of the episcopal functions of any person who at the passing of the said Irish Church Act was a bishop thereof:

The term "clergy and laity of the said Church" shall include clergy and laity in communion with bishops of the said Church:

The term "Protestant Episcopalian" shall mean a member of any of the churches following; (that is to say,)

The said Church, the Church of England, the Episcopal Church of Scotland, and any other Protestant Episcopal Church.

## PART I.

### *Matrimonial Causes and Matters.*

5. All suits and proceedings in causes and matters matrimonial which, upon the first day of January one thousand eight hundred and seventy-one, shall be pending in any ecclesiastical court in Ireland, shall be transferred to, dealt with, and decided by the Court for Matrimonial Causes and Matters herein-after mentioned, as if the same had been originally instituted in the said Court, subject to the following qualification:

If on the said first day of January one thousand eight hundred and seventy-one any cause or matter which would be transferred to the said Court for Matrimonial Causes and Matters under the enactment herein-before contained shall have been heard before any judge having, at the time of such hearing, the same jurisdiction in relation to such cause or matter, and be then standing for judgment, such judge may, at any time within



six weeks after the said first day of January one thousand eight hundred and seventy-one, give in to one of the registrars attending the Court for Matrimonial Causes and Matters a written judgment thereon, signed by him; and a decree or order, as the case may require, shall be drawn up in pursuance of such judgment, and every such decree or order shall have the same force and effect as if it had been drawn up in pursuance of a judgment of the Court for Matrimonial Causes and Matters on the day on which the same was delivered to the registrar.

6. Any decree or order of any ecclesiastical court of competent jurisdiction made before the first day of January one thousand eight hundred and seventy-one in any cause or matter matrimonial may be enforced or otherwise dealt with by the Court for Matrimonial Causes and Matters herein-after mentioned in the same way as if it been originally made by the said Court under this Act.

7. From and after the first day of January one thousand eight hundred and seventy-one, all jurisdiction now vested in or exercisable by any ecclesiastical court or person in Ireland in respect of divorces a mensâ et thoro, suits of nullity of marriage, suits for restitution of conjugal rights or jactitation of marriage, and in all causes, suits, and matters matrimonial, except in respect of marriage licences, shall belong to and be vested in Her Majesty, and such jurisdiction shall be exercised in the name of Her Majesty in a court of record, to be called the Court for Matrimonial Causes and Matters.

8. The judge of the Court of Probate shall be the judge of the said Court for Matrimonial Causes and Matters, and shall have full authority to hear and determine all matters arising therein.

9. In case the Lord Chancellor of Ireland, in pursuance of the provisions of "The Probates and Letters of Administration Act (Ireland), 1867," shall request a judge of one of the superior courts of law in Ireland to sit for the judge of the Court of Probate, and exercise his powers, then such judge may also sit as judge of the Court of Matrimonial Causes and Matters, and exercise all the powers of the judge of the said Court.

10. The Court for Matrimonial Causes and Matters shall hold its sittings in the court from time to time appointed for the hearing of causes in the Court of Probate in Ireland.

11. The Lord Chancellor shall direct a seal to be made for the said Court for Matrimonial Causes and Matters, and may direct the same to

be broken, altered, and renewed at his discretion; and all decrees and orders, or copies of decrees or orders of the said Court, purporting to be sealed with the said seal, shall be received in evidence without further proof thereof.

12. The registrars and other officers of the principal registry of the Court of Probate shall be also the registrars and officers of the said Court for Matrimonial Causes and Matters, and shall attend the sittings of the said Court for Matrimonial Causes and Matters, and assist in the proceedings thereof, and discharge in connexion therewith such duties as the judge of the said Court shall direct; and the principal registry of the Court of Probate shall also be the registry of the Court for Matrimonial Causes and Matters.

13. In all suits and proceedings the said Court for Matrimonial Causes and Matters shall proceed and act and give relief on principles and rules which, in the opinion of the said Court, shall be as nearly as may be conformable to the principles and rules on which the ecclesiastical courts of Ireland have heretofore acted and given relief, but subject to the provisions herein contained, and to the rules and orders to be made by the said Court under this Act.

14. It shall be lawful for the judge of the said Court for Matrimonial Causes and Matters for the time being to sit in chamber for the despatch of such part of the business of the said Court as can in the opinion of the said judge with advantage to the suitors be heard in chamber, and such sittings shall from time to time be appointed by the said judge.

15. It shall be lawful for the said Court for Matrimonial Causes and Matters to cause any question of fact arising in any suit or proceeding in said Court, on the application of either party to such suit or proceeding, to be tried by a special or common jury before the Court itself, or by means of an issue to be directed to any of the superior courts of common law in the same manner as an issue may now be directed by the Court of Chancery; and where the Court shall refuse to cause such question to be tried by a jury such refusal shall be subject to appeal as herein provided.

16. When the Court for Matrimonial Causes and Matters orders a question of fact to be tried before itself by a jury the Court may make all such rules and orders upon the sheriff or any other person for procuring the attendance of a special or common jury for the trial of such question as may now be made by any of the superior courts of common law at Dublin, and may also make any other orders which to such

Court may seem requisite; and every such jury shall consist of persons possessing the like qualifications, and shall be struck, summoned, balloted for, and called in like manner, as if such jury were a jury for the trial of any cause in any of the said superior courts; and every jurymen so summoned shall be entitled to the same rights and subject to the same duties and liabilities as if he had been duly summoned for the trial of any such cause in any of the said superior courts; and every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party to any such cause; and generally for all purposes of or auxiliary to the trial of questions of fact by a jury before the Court itself, and in respect of new trials thereof, and also for all purposes in relation to or consequential upon the direction of issues, the Court for Matrimonial Causes and Matters shall have the same jurisdiction, powers, and authority in all respects as belong to any superior court of common law or to any judge thereof, or to the High Court of Chancery or any judge thereof, for the like purposes.

17. When any such question is so ordered to be tried by a jury before the Court itself such question shall be reduced into writing in such form as the Court shall direct, and at the trial the jury shall be sworn to try the said question, and a true verdict to give thereon according to the evidence; and upon every such trial the Court for Matrimonial Causes and Matters shall have the same powers, jurisdiction, and authority as belong to any judge of any of the said superior courts sitting at Nisi Prius.

18. The judge of the said Court for Matrimonial Causes and Matters, with the approbation of the Lord Chancellor and Lord Justice of Appeal in Chancery, shall make, and, when made, may add to, rescind, amend, or alter, rules and regulations with respect to the following matters:

1. The procedure and practice in matrimonial causes and matters, which procedure and practice may be the same as nearly as may be as the procedure and practice of the Court of Probate:
2. The scale of costs and fees to be charged upon any proceedings in such matrimonial causes and matters, subject nevertheless to the sanction of the Commissioners of Her Majesty's Treasury as to the amount of fees to be charged.

Any rules and regulations, and every addition, alteration, or amendment to, in, or of the same, made in pursuance of this section, shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act.

The judge of the said Court for Matrimonial Causes and Matters shall cause a copy of any rules relating to fees to be charged, and every addition, reduction, alteration, or amendment to, in, or of such rules to be published in the Dublin Gazette, and no other fees than those specified and allowed in such rules shall be demanded or taken.

19. No fee payable under this part of this Act shall be received in money, but the same shall be received by a stamp denoting the amount of the fee which otherwise would be payable.

20. All the provisions of sections one hundred and five, one hundred and six, and one hundred and seven of the Probates and Letters of Administration Act (Ireland), 1857, relating to stamps and fees, and to the punishment of fraudulent acts or practices relating thereto, shall be deemed to apply and shall apply to stamps and fees authorized to be taken by this part of this Act, or any rules made in pursuance thereof, and to the punishment of fraudulent acts or practices relating thereto, in like manner in every respect as if the said last-mentioned stamps and fees were authorized to be taken by the said Act.

21. All persons admitted to practise as advocates or proctors respectively in any ecclesiastical court in Ireland, and all barristers, attorneys, and solicitors entitled to practise in the superior courts at Dublin, shall be entitled to practise in the said Court for Matrimonial Causes and Matters.

22. All letters patent (if any), records, deeds, processes, acts, proceedings, books, documents, or other instruments or papers relating to marriages or to any matters or causes matrimonial, shall, within two months after the said first day of January one thousand eight hundred and seventy-one, be transmitted by the respective judges, registrars, or other officers of the several ecclesiastical courts in Ireland, or other the persons then having the custody or possession of the same, to the principal registry of the said Court for Matrimonial Causes and Matters.

23. Subject to such rules and regulations as may be established as herein provided, the witnesses in all proceedings before the said Court for Matrimonial Causes and Matters, where their attendance can be had, shall be sworn and examined orally in open court: Provided that parties, except as herein-before provided, shall be at liberty to verify their respective cases in whole or part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party or by direction of the Court, be

subject to be cross-examined by or on behalf of the opposite party, orally in open court, and after such cross-examination may be re-examined orally in open court by or on behalf of the party by whom such affidavit was filed.

24. The said Court for Matrimonial Causes and Matters shall have the same powers to compel the attendance of witnesses and the production of documents, and for that purpose to issue writs of Subpœna and Subpœna duces tecum, and also the same powers to issue commissions for the examination of witnesses, and to give orders in respect of such examinations, and to enforce the same, as are now vested in and capable of being exercised by the Court of Probate.

25. All persons wilfully deposing or affirming falsely in any proceeding before the said Court shall be deemed to be guilty of perjury, and shall be liable to all the pains and penalties attached thereto.

26. Any person considering himself aggrieved by any final or interlocutory decree or order of the said Court for Matrimonial Causes and Matters may appeal therefrom to the Court of Appeal in Chancery, and thence to the House of Lords: Provided always, that no appeal from any interlocutory order of the said Court shall be made without leave of the said Court first obtained, but on the hearing of an appeal from any final decree all interlocutory orders complained of shall be considered as under appeal as well as the final decree.

27. The said Court for Matrimonial Causes and Matters, on the hearing of any suit, proceeding, or petition under this Act, and the Court of Appeal in Chancery and the House of Lords, on the hearing of any appeal under this Act, may make such order as to costs as to such Court, Court of Appeal, or House respectively may seem just: Provided always, that there shall be no appeal on the subject of costs only.

28. There shall be paid to the officers of the Court of Probate in Ireland, by way of remuneration for any additional duties by this Act imposed upon them, such annual sums by way of additional salaries respectively as the Lord Lieutenant may direct and the Commissioners of Her Majesty's Treasury may approve, and all such sums shall be paid by the said Commissioners out of moneys to be provided by Parliament for that purpose.

29. The jurisdiction heretofore exercised by the Archbishop of Armagh, the master of the faculties, or other the commissary or commissaries of the said archbishop, in reference to the admission of

public notaries, shall, from and after the first day of January one thousand eight hundred and seventy-one, be vested in and exercised by the Lord Chancellor of Ireland.

30. Whereas it was intended by the forty-fifth section of the Irish Church Act, 1869, to provide compensation for all loss of emoluments connected with ecclesiastical jurisdiction, whether arising from suits or from marriage licences or fees for admission of public notaries; and whereas doubts have arisen as to whether the officers of the Court of Faculties of the Archbishop of Armagh are included in the said section; be it therefore enacted, that "the Commissioners of Church Temporalities in Ireland" shall be at liberty, if it appear to them just, to make compensation to the officers of the said Court of Faculties out of the same funds and within the same limit as to amount as are by said Act provided in respect of officers of the diocesan courts.

31. All rules and regulations to be made under this part of this Act concerning procedure and practice, and fees to be charged in any proceedings under this part of this Act, and all alterations thereof to be from time to time made, shall be laid before both Houses of Parliament within one month after the making thereof, if Parliament be then sitting, or, if Parliament be not then sitting, within one month after the commencement of the then next session of Parliament.

## PART II.

### *Amendment of Marriage Law.*

32. Marriage between persons both of whom are Protestant Episcopalians may be solemnized in any of the churches or chapels following:

1. In any church or chapel in which at the time of the passing of this Act marriages may be solemnized according to the rites of the United Church of England and Ireland, and in which Divine Service, according to the rites of the said Church as herein-before defined, shall continue to be performed: or,
2. In any church or chapel which, after the passing of this Act, shall be licensed for the celebration of marriages in manner by this Act provided.

33. The provisions following shall apply to all marriages solemnized in any of the said churches or chapels:

1. The ceremony of marriage shall be preceded by—
  - (1.) Publication of banns in any church or chapel in which a marriage may be solemnized under the provisions of this

Act, which publication shall be made in the manner and according to the rules at the time of the passing of this Act in force in Ireland in relation to the publication of banns in parish churches and chapels of the United Church of England and Ireland; or by

- (2.) Licence or special licence granted in manner by this Act provided; or by
- (3.) Certificate from the registrar to be granted by him in like manner and subject to the like conditions as such certificate may, at the time of the passing of this Act, be granted:

2. The several provisions contained in the Act passed in the session of the seventh and eighth years of the reign of Her present Majesty, chapter eighty-one, and in the Act passed in the session of the twenty-sixth year of the said reign, chapter twenty-seven, and which at the time of the passing of this Act are applicable to persons in Holy Orders of the United Church of England and Ireland, and relate to the celebration of marriages by them, shall (except so far as the same are expressly altered or varied by this Act) apply to and be in force with respect to the celebration of marriages by any clergyman having authority to officiate, or who shall be permitted by such clergyman to officiate, in any aforesaid church or chapel in which marriage may be solemnized under the provisions of this Act, save only that such marriages may be celebrated at any time between the hours of eight o'clock in the forenoon and two o'clock in the afternoon.

34. Every bishop of the said Church may from time to time, by writing under his hand, subject to the approval of the Lord Lieutenant or other general governor or governors of Ireland, license any church or chapel for the celebration of marriages in any district within his episcopal superintendence to be named in such licence between persons one or both of whom shall reside within the limits of such district; and every such bishop shall, as soon as may be after the granting of each such licence, certify the granting thereof to the Registrar General of Marriages in Ireland, and shall send a copy of such licence to the said Registrar General, who shall keep the same with the other records of his office: Provided always, that a person who shall have dwelt for fourteen days prior to the ceremony within the limits of the district shall be deemed to reside therein.

35. Every bishop of the said Church may, by writing under his hand, nominate persons to issue licences for marriages, and, by the same or other writings, define in and for what districts within

the episcopal superintendence of such bishop such persons are respectively to issue the same, and in and for the district at the time of the passing of this Act known as the exempt jurisdiction of Newry and Morne the person at the time of the passing of this Act holding the office of vicar-general of the said exempt jurisdiction shall have power to issue licences for marriage, and shall continue so to do until the said district is included within the episcopal superintendence of some bishop of the said church; and every such licence shall be held to authorize marriage in any churches and chapels situate within such districts respectively in which marriages may be solemnized under the provisions of this Act, and which shall be specified in such licences, whenever both of the parties shall be Protestant Episcopalians, and resident within such districts; and such licences shall be in the form No. I. in the schedule (A.) to this Act annexed, or to the like effect; and for every such licence such person shall be entitled to have for his own benefit, of the party requiring the same, such fee not exceeding the sum of five shillings as may from time to time be appointed in that behalf by any general synod or convention of the bishops, clergy, and laity of the said Church; and in any case in which such person shall refuse to grant such licence, the person applying for the same shall be entitled to appeal to the bishop by whom such person shall have been so appointed, or his successor, who shall thereupon either confirm the refusal or direct the grant of the licence; and every person so appointed shall four times in every year, on such days as shall be appointed by the registrar general, make a return to the registrar general of every licence granted by him since his last return, and of the particulars stated concerning the parties: Provided always, that no such person shall grant any such licence until he shall have given security by his bond in the sum of one hundred pounds to the registrar general for the due and faithful execution of his office.

A licence for marriage shall not be granted by any such person until seven days after notice shall have been given by one of the parties who shall have dwelt for not less than seven days then next preceding in the district named in that notice, under his or her hand, in the form No. II. in the schedule (A.) to this Act annexed, or to the like effect, to such person, and such person shall forthwith send a copy of such notice to the clergyman officiating at the places of worship where the parties intending marriage have been in the habit of attending.

Every person so appointed shall file and keep with the records of his office every such notice, and shall also forthwith enter a true copy of such notice fairly in a book to be for that purpose furnished to him by the Registrar General, to be called "The Marriage Notice Book," which book shall be open at all reasonable times, without fee,

to all persons desirous of inspecting the same, and for entering every such notice the person so appointed shall be entitled to have such fee, not exceeding one shilling, as may be from time to time appointed in that behalf by any such general synod or convention as aforesaid over and above the accustomed fee for granting the licence.

Whenever a marriage shall not be had within three calendar months after the notice shall have been so given to the person so appointed as aforesaid, the notice, and any licence which may have been granted thereupon, shall be utterly void.

Before any licence for marriage shall be granted by any such person one of the parties intending marriage shall appear personally before him, and shall make and subscribe an oath or make affirmation, which oath or affirmation such person is hereby authorized to administer, that he or she believeth that there is not any impediment of kindred or alliance or other lawful hindrance to the said marriage, and that one of the said parties hath for the space of fourteen days immediately before the day of the grant of such licence had his or her usual place of abode within the district attached in manner herein provided, for the purpose of celebration of marriages, to the church or chapel in which such marriage is to be solemnized, and that they are both of the full age of twenty-one years, or, when either of the parties shall be under the age of twenty-one years, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there is no person having authority to give such consent, or that such person is a widower or widow, as the case may be.

36. When both the parties about to contract marriage are Protestant Episcopalians, any bishop of the said Church may grant special licences to marry at any convenient time in any place within his episcopal superintendence.

37. Special licences to marry at any convenient time at any place in Ireland may be granted to parties about to contract marriage by any of the persons following; (that is to say,)

The moderator of the General Assembly of the Presbyterian Church in Ireland:

The moderator of the Remonstrant Synod of Ulster:

The moderator of the Presbytery of Antrim:

The moderator of the Northern Presbytery of Antrim:

The moderator of the Synod of Munster:

The moderator of the Eastern Reformed Presbyterian Synod:

The moderator of the United Presbyterian Presbytery of Ireland:

The moderator of the Secession Church in Ireland:

The moderator of the Reformed Presbyterian Synod of Ireland:

The chairman of the Congregational Union of Ireland:

The president or head of the Methodist or Wesleyan Church:

The president or head of the Methodist New Connexion Church:

The president or head of the Association of the Baptist Churches in Ireland:

The clerk to the yearly meeting of the Society of Friends in Ireland:

Provided always, that the parties to whom any such special licence is granted are both members of the same church as the moderator, chairman, president, head, or clerk granting such special licence.

38. A marriage may, notwithstanding anything to the contrary herein-before in this Act contained, be lawfully solemnized by a Protestant Episcopalian clergyman between a person who is a Protestant Episcopalian and a person who is not a Protestant Episcopalian, and by a Roman Catholic clergyman between a person who is a Roman Catholic and a person who is not a Roman Catholic, provided the following conditions are complied with:

1st. That such notice is given to the registrar and such certificate is issued as at the time of the passing of this Act is required by the Act passed in the session of the seventh and eighth years of the reign of Her present Majesty, chapter eighty-one, as amended by the Act passed in the session of the twenty-sixth year of the said reign, chapter twenty-seven, in every case of marriage intended to be solemnized in Ireland according to the rites of the United Church of England and Ireland, with the exception of marriages by licence or special licence, or after publication of banns:

2d. That the certificate of the registrar is delivered to the clergyman solemnizing such marriage at the time of the solemnization of the marriage:

3d. That such marriage is solemnized in a building set apart for the celebration of divine service according to the rites and ceremonies of the religion of the clergyman solemnizing such marriage, and situate in the district of the registrar by whom the certificate is issued:

4th. With open doors:

5th. That such marriage is solemnized between the hours of eight in the forenoon and two in the afternoon in the presence of two or more credible witnesses.

39. There shall be repealed so much of an Act of the Parliament of Ireland passed in the nine-

teenth year of the reign of King George the Second, chapter thirteen, as provides that a marriage between a Papist and any person who hath been or hath professed himself or herself to be a Protestant at any time within twelve months before such celebration of marriage, if celebrated by a Popish priest, is to be void; but any marriage solemnized by a Protestant Episcopalian clergyman between a person who is a Protestant Episcopalian and a person who is not a Protestant Episcopalian, or by a Roman Catholic clergyman between a person who is a Roman Catholic and a person who is not a Roman Catholic, shall be void to all intents in cases where the parties to such marriage knowingly and wilfully intermarried without due notice to the registrar, or without certificate of notice duly issued, or without the presence of two or more credible witnesses, or in a building not set apart for the celebration of divine service according to the rites and ceremonies of the religion of the clergyman solemnizing such marriage.

40. No Protestant Episcopalian clergyman and no Roman Catholic clergyman shall be subject to any punishment, pain, or penalty whatever for solemnizing a marriage in pursuance of and in accordance with the provisions of this Act.

41. Section three of the Act of the session of the twenty-sixth and twenty-seventh years of the reign of Her present Majesty, chapter twenty-seven, shall be amended in manner following; (that is to say,)

Where the marriage is intended to be contracted in the office of the registrar, and where there is not any minister of the church, chapel, or place of public worship which the parties to the marriage, or either of them, usually attend, and where the parties to the marriage are not Jews or members of the Society of Friends, the registrar shall proceed as follows: he shall cause a copy of the notice given to him to be published, at the expense of the parties intending marriage, once at least in two consecutive weeks next after he has received such notice in some newspaper circulating in the district in which such marriage is intended, or if there is not any newspaper circulating in such district, then in some newspaper circulating in the county in which such district is situate; any registrar neglecting or refusing to publish such notice in manner aforesaid shall be liable to a penalty of forty pounds, recoverable in like manner as penalties under the said Act.

42. Except where the provisions of the Acts passed in the session of the seventh and eighth years of the reign of Her Majesty, chapter eighty-one, and in the session of the twenty-sixth year of the same reign, chapter twenty-seven, are expressly altered by or are at variance with this Act, nothing herein contained shall alter, repeal, or affect the provisions of the said Acts respectively; and this Act shall, except as aforesaid, be considered as incorporated with the said Acts, and be construed together with the same.

#### SCHEDULE (A.)

##### No. I.

##### FORM OF LICENCE.

A.B., appointed to issue licences for marriages in the district of \_\_\_\_\_ under the provisions of the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870, to C.D. of \_\_\_\_\_ and E.F. of \_\_\_\_\_ sendeth greeting.

WHEREAS ye are minded, as it is said, to enter into a contract of marriage under the provisions of The Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870, and are desirous that the same may be speedily and publicly solemnized: And whereas you C.D. [or E.F.] have made and subscribed a declaration under your hand that you believe there is no impediment of kindred or alliance or other lawful

hindrance to the said marriage, and that you C.D. [or E.F.] have [or has] had your [or his or her] usual place of abode for the space of fourteen days last past within the district of ( \_\_\_\_\_ ), and [in cases where either party is under age, and not a widower or widow] that you C.D. [or E.F.] are [or is] under the age of twenty-one years, and that the consent of G.H., whose consent to your [or his or her] marriage is required by law, has been obtained thereto [or that there is no person having authority to give such consent], or where a party so under age is a widower or widow, that you C.D. [or E.F.] are [or is] under twenty-one years of age, but are [or is] a widower or widow, as the case may be: I do hereby grant unto you full licence, according to the authority in that behalf given to me by the said Act, to proceed to solemnize such marriage, provided that the said marriage be publicly solemnized in the presence of two witnesses, within three calendar months from the [here insert the date of the receipt of the

notice by the person issuing the licence] in the under my hand, this day  
 [here describe the building in which the marriage of one thousand eight hundred  
 is to be solemnized], between the hours of eight in and  
 the forenoon and two in the afternoon. Given (Signed) A.B.

## No. II.

## NOTICE OF MARRIAGE.

To A.B. [or C.D.] appointed to issue licences for marriages in the district of  
 under the provisions of the Matrimonial Causes and Marriage Law (Ireland) Amendment Act,  
 1870.

I HEREBY give you notice that a marriage is intended to be had, within three calendar months  
 from the date hereof, between me and the other party herein named and described; (that is to say,)—

Name.	Con- dition.	Rank or Condition.	Age.	Dwelling Place.	Length of Residence.	Church or Building in which Marriage is to be solemnized.	District and County in which the other Party resides when the Parties dwell in different Districts.
Lucius Smith -	Widower	Carpenter	Of full age.	High Street, Roscrea.	23 days	Sion Chapel, Roscrea, Tipperary.	Maryborough, Queen's County.
Margaret Shaw -	Spinster	-	Minor	Grove Farm, near Mary- borough.	More than a month.		

Witness my hand this [sixth] day of [May 1871.]

(Signed) Lucius Smith.

[The particulars in this schedule to be entered according to the fact]

## CHAP. 111.

*The Beerhouse Act, 1870.*

## ABSTRACT OF THE ENACTMENTS.

1. Rating qualification and closing hours of beerhouses within townships where separate poor rate is or can be made.
2. Restricted application of Act.
3. Short title.

An Act to make provision in relation to  
 certain Beerhouses not duly qualified  
 according to Law.

(10th August 1870.)

WHEREAS in misapprehension of the provisions  
 of an Act passed in the third and fourth years of

the reign of Her present Majesty, chapter sixty-  
 one, licences and certificates for the sale of beer  
 and cider have been granted in respect of houses  
 not duly qualified as by the first section of the  
 said Act is required:

Be it enacted by the Queen's most Excellent  
 Majesty, by and with the advice and consent of  
 the Lords Spiritual and Temporal, and Commons,

in this present Parliament assembled, and by the authority of the same, as follows :

1. A dwelling-house, if situated within a township for which a separate poor rate is or can be made, or within a hamlet for which a separate poor rate is or can be made, shall, for the purpose of determining by reference to population, in accordance with the first and fifteenth sections respectively of the said Act, the rating qualification and the closing hour applicable to such house as a house for the sale of beer or cider, be deemed to be within such township or hamlet, as the case may be, and not within any larger

area of which such township or hamlet forms a part.

2. This Act shall apply exclusively to houses in respect of which licences under Acts to permit the general sale of beer and cider by retail in England are in force at the time of the passing of this Act, and to such houses so long only as such licences or any renewal thereof shall remain in force.

3. This Act may be cited for all purposes as "The Beerhouse Act, 1870."

## CHAP. 112.

### *The Glebe Loan (Ireland) Act, 1870.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Interpretation of terms.*
3. *The Commissioners of Public Works may make advances to such amounts as may be sanctioned.*
4. *One third of estimated cost of work to be secured. Loan only to amount to two thirds of purchase money of glebe.*
5. *Security for repayment of loan for work.*
6. *Security for repayment of loan for glebe.*
7. *Loan to be repaid by annuity. Rentcharge may be increased so as to repay sum advanced sooner than time appointed.*
8. *Mortgages, bonds, &c. under this Act exempt from stamp duty.*
9. *Sects. 37. and 38. of 1 & 2 Will. 4. c. 33. repealed.*
10. *Duration of Act.*  
*Schedule.*

An Act to amend the Act of the first and second years of the reign of His late Majesty King William the Fourth, chapter thirty-three, in part, and to afford facilities for obtaining Loans for the erection, enlargement, and improvement of Glebe Houses, and for the acquirement of lands for Glebes, in Ireland. (10th August 1870.)

WHEREAS by an Act passed in the session of Parliament held in the first and second years of the reign of His late Majesty King William the Fourth, intituled "An Act for the extension and "promotion of public works in Ireland," it was amongst other things enacted, that it should and might be lawful for the Commissioners of Public Works acting in the execution of the said Act to make loans or advances for works on security, by writing obligatory alone, upon the terms and conditions in the said Act mentioned :

And whereas it is expedient to afford facilities for obtaining loans for the erection, enlargement, and improvement of glebe houses, and for the acquirement of lands for glebes, in Ireland :

And whereas for the purposes aforesaid it is expedient to amend the said recited Act, and to authorise the said Commissioners of Public Works in Ireland to make loans to the amount, upon the security, and in the manner by this Act authorised :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same :

1. This Act may be cited for all purposes as "The Glebe Loan (Ireland) Act, 1870."

2. In this Act—

The term "ecclesiastical person" means and includes any archbishop, bishop, clergyman, priest, curate, or minister of any religious denomination whatsoever :



The term "work" means the erection, enlargement, or structural improvement of any dwelling-house for any ecclesiastical person having spiritual charge, as regards members of his own denomination, of any parish or district in which such work is executed, or permanently officiating in any church or chapel within such parish or district:

The term "glebe" means any piece or parcel of land, not exceeding in the whole ten acres, occupied or to be occupied by any ecclesiastical person while having spiritual charge of any parish or district in respect of which such glebe shall be purchased or acquired.

3. It shall be lawful for the Commissioners of Public Works in Ireland, during the continuance of this Act, with the sanction of the Commissioners of Her Majesty's Treasury, out of moneys issued to them or to be issued to them in pursuance of the provisions of the several Acts in the schedule to this Act annexed mentioned, to make loans to any person or persons of such sums as the said Commissioners of Public Works may think right and proper, upon the security and subject to the conditions by this Act authorised, for all or any of the purposes following; (that is to say,)

1. The execution of any work.
2. The purchase of any glebe.
3. The discharge of any debt due and incurred before the passing of this Act in the purchase of any dwelling-house for any ecclesiastical person having spiritual charge, as regards members of his own denomination, of the parish or district in which such dwelling-house is situate, or permanently officiating in any church or chapel within such parish or district, or in the purchase of any glebe.

4. The person or persons to whom such loans shall be granted for the execution of any work shall previously expend, secure, or deposit, in such manner as the said Commissioners of Public Works shall direct, a sum equal to not less than one third of the estimated cost of the construction of the proposed work; and no person or persons shall, for the purpose of purchasing any glebe or discharging any debt incurred before the passing of this Act in the purchase of any glebe, be granted by way of loan a sum greater than two thirds of the purchase money to be paid or already paid for such glebe.

5. The repayment of every loan which shall be made under the provisions of this Act for the purpose of executing any work, or discharging any debt incurred before the passing of this Act in the purchase of any dwelling-house for any

ecclesiastical person as aforesaid, shall be secured by mortgage, bond, or otherwise, as the said Commissioners of Public Works, with the approval of the Commissioners of Her Majesty's Treasury, may think right; and every such security other than a mortgage shall be entered into by at least three persons, the sufficiency and solvency of which persons shall be made out to the satisfaction of the said Commissioners of Public Works, and shall be subject to such conditions as the said Commissioners of Public Works, with such approval as aforesaid, shall deem to be proper.

6. Every loan which shall be made under the provisions of this Act for the purchase of any glebe or the discharge of any debt incurred before the passing of this Act in the purchase of any glebe shall be repaid by the payment of an annual rentcharge of the amount and for the time hereinafter mentioned, and every such glebe shall be deemed to be and shall be well charged with the payment of such rentcharge, and that in priority of all charges and incumbrances whatsoever, save and except quitrents and rentcharges in lieu of tithes, and also save and except all charges prior in date, if any, existing under or by virtue of any of the Acts mentioned in the schedule to this Act annexed; and all the provisions of the Act passed in the tenth and eleventh years of the reign of Her present Majesty, chapter thirty-two, as to the recovery of rentcharges payable thereunder, shall extend and apply to the recovery of rentcharges charged under the provisions of this Act upon glebes.

7. Every loan which shall be made under the provisions of this Act shall be repaid by the payment to Her Majesty of an annual sum of five pounds for every one hundred pounds of such loan from time to time advanced, and so on in proportion for any lesser amount, and to be payable for the term of thirty-five years, to be computed from the date of the advance in respect of which the said annual sum shall be charged, such annual sum to be paid by equal half-yearly payments on the fifth day of April and tenth day of October in every year during the said term of thirty-five years, with such apportionment, if any, as may be necessary in respect of the first and last of such payments: Provided always, that the amount of such annual sum may, by agreement, and with the sanction of the Commissioners of Her Majesty's Treasury, be increased to such amount as will repay the sum so advanced sooner than the said period of thirty-five years hereinbefore appointed.

8. No mortgage, bond, obligation, security, contract, agreement, or other instrument whatso-

ever executed under the provisions of this Act, nor any memorial thereof for registration, shall be liable to any stamp duty whatever.

9. From and after the passing of this Act sections thirty-seven and thirty-eight of the Act of the first and second years of the reign of His late

Majesty King William the Fourth, chapter thirty-three, shall be and the same are hereby repealed.

10. The provisions of this Act, except the next preceding section, shall continue in operation until the first day of September one thousand eight hundred and seventy-five, and no longer.



#### SCHEDULE.



1 & 2 Will. 4. c. 33.  
10 & 11 Vict. c. 32.  
12 Vict. c. 23.  
13 & 14 Vict. c. 31.  
29 & 30 Vict. c. 40.



## A T A B L E

OF

All the STATUTES passed in the Second Session of the Twentieth Parliament of the United Kingdom of Great Britain and Ireland.

33 & 34 VICTORIA.—A.D. 1870.

## PUBLIC GENERAL ACTS.

1. An Act to empower Committees on Bills confirming Provisional Orders to award Costs and examine Witnesses on Oath - - - Page 3
2. An Act to make provision for the proceedings of Boards of Management and Boards of Guardians upon the dissolution of Districts and Unions or the Annexation of Parishes to Unions - - - - 4
3. An Act to make better provision for making laws and regulations for certain parts of India, and for certain other purposes relating thereto - - - - 6
4. An Act to make provision for the assessment of Income Tax, and to amend the law relating to Inland Revenue - - - - 8
5. An Act to apply certain sums out of the Consolidated Fund to the service of the years ending on the thirty-first day of March one thousand eight hundred and sixty-nine, one thousand eight hundred and seventy, and one thousand eight hundred and seventy-one, and preceding years - - - - 9
6. An Act to extend the Jurisdiction of the Judges of the Superior Courts of Common Law at Westminster - - - - 10
7. An Act for punishing Mutiny and Desertion, and for the better payment of the Army and their Quarters - - - - 11
8. An Act for the Regulation of Her Majesty's Royal Marine Forces while on shore - - 48
9. An Act to amend "The Peace Preservation (Ireland) Act, 1856," and for other purposes relating to the Preservation of Peace in Ireland - - - - 80
10. An Act to consolidate and amend the law relating to the Coinage and Her Majesty's Mint - - - - 94
11. An Act to enable the officers employed in the Collector-General of Rates' office in the city of Dublin to vote at Parliamentary Elections for that city - - - - 100
12. An Act to repeal certain Duties of Customs in the Isle of Man - - - - 101
13. An Act to amend the Law relating to the Surveys of Great Britain, Ireland, and the Isle of Man - - - - 102
14. An Act to amend the Law relating to the legal condition of Aliens and British Subjects - - - - 103
15. An Act to transfer to the Commissioners of Her Majesty's Works and Public Buildings the property in and control over the buildings and property of the County Courts in England, and for other purposes relating thereto - 109
16. An Act to define the boundary between the counties of Inverness and Elgin or Moray, in the district of Strathspey; and for other purposes - - - - 111
17. An Act for making further provision relating to the Management of certain Departments of the War Office - - - - 114

18. An Act to provide for the equal distribution over the Metropolis of a further portion of the charge for the Relief of the Poor - - - 115
19. An Act to amend "The Railway Companies Powers Act, 1864," and "The Railway Construction Facilities Act, 1864." - - - 116
20. An Act to amend "The Mortgage Debenture Act, 1865." - - - 118
21. An Act to disfranchise the Boroughs of Bridgwater and Beverley - - - 122
22. An Act to confirm a certain Provisional Order made under an Act of the fifteenth year of Her present Majesty, to facilitate arrangements for the relief of Turnpike Trusts - - - 123
23. An Act to abolish Forfeitures for Treason and Felony, and to otherwise amend the Law relating thereto - - - 124
24. An Act for making further provision respecting the borrowing of money by the Metropolitan Board of Works - - - 129
25. An Act to disfranchise certain Voters of the City of Norwich - - - 130
26. An Act to regulate the Sale of Poisons in Ireland - - - 131
27. An Act for the Protection of Inventions exhibited at International Exhibitions in the United Kingdom - - - 133
28. An Act to amend the law relating to the Remuneration of Attorneys and Solicitors 134
29. An Act to amend and continue "The Wine and Beerhouse Act, 1869" - - - 137
30. An Act to abolish Attachment of Wages 140
31. An Act to apply the sum of nine million pounds out of the Consolidated Fund to the service of the year ending the thirty-first day of March one thousand eight hundred and seventy-one - - - 141
32. An Act to grant certain Duties of Customs and Inland Revenue, and to repeal and alter other Duties of Customs and Inland Revenue 142
33. An Act to amend the Acts relating to the Export of unseasonable Salmon - - - 148
34. An Act to amend the Law as to the Investment on Real Securities of Trust Funds held for public and charitable purposes - - - 148
35. An Act for the better apportionment of Rents and other periodical Payments - - - 149
36. An Act to amend "The Cattle Disease Act (Ireland), 1866" - - - 150
37. An Act to enable the senior Magistrate of populous places in Scotland to act ex officio as a Justice of the Peace and Commissioner of Supply for the County in which the said populous Place is situated - - - 154
38. An Act to disfranchise the Boroughs of Sligo and Cashel - - - 154
39. An Act to facilitate transfers of Ecclesiastical Patronage in certain cases - - - 155
40. An Act for authorising a guarantee of a loan to be raised by the Government of New Zealand for the construction of roads, bridges, and communications in that country, and for the introduction of settlers into that country - 156
41. An Act for raising the sum of one million three hundred thousand pounds by Exchequer Bonds for the service of the year ending on the thirty-first day of March one thousand eight hundred and seventy-one - - - 158
42. An Act to empower magistrates and town councils of burghs in Scotland to abolish petty customs and to levy a rate in lieu thereof - 159
43. An Act to alter certain Duties of Customs upon Refined Sugar in the Isle of Man - 160
44. An Act to declare the Stamp Duty chargeable on certain Leases - - - 160
45. An Act for establishing a District Registrar of the High Court of Admiralty in England at Liverpool - - - 161
46. An Act to amend the Law relating to the Occupation and Ownership of Land in Ireland - - - 163
47. An Act for extending to Ireland and amending "The Dividends and Stock Act, 1869" 182
48. An Act for removing doubts respecting the payment of expenses incurred in the Conveyance of Paupers in certain cases not expressly provided for by Law - - - 183
49. An Act to explain and amend "the Evidence Further Amendment Act, 1869" - - - 184
50. An Act to amend "The Shipping Dues Exemption Act, 1867" - - - 184
51. An Act to repeal an Act intituled "An Act to alter the mode of giving Notices for the holding of Vestries, of making Proclamation in cases of Outlawry, and of giving Notices on Sundays in respect to various matters," so far as such Act relates to the Isle of Man - - - 185
52. An Act for amending the Law relating to the Extradition of Criminals - - - 186
53. An Act to amend certain provisions in the Sanitary and Sewage Utilization Acts - 194
54. An Act to disfranchise certain Voters of the City of Dublin - - - 195
55. An Act to vest Jurisdiction in matters arising within the Dominions of the Kings of Siam in the Supreme Court of the Straits Settlements - - - 195
56. An Act to enable the owners of Settled Estates in England and Ireland to charge such estates, within certain limits, with the expense of building mansions as residences for themselves - - - 196

57. An Act to grant a Duty of Excise on Licences to use Guns - - - 197
58. An Act to further amend the Law relating to indictable offences by Forgery - - 200
59. An Act to render valid certain Contracts informally executed in India - - 201
60. An Act to relieve the Brokers of the City of London from the supervision of the Court of Mayor and Aldermen of the said City - 202
61. An Act to amend the law relating to Life Assurance Companies - - - 204
62. An Act to amend and extend the Acts relating to Factories and Workshops - 214
63. An Act to limit Wages Arrestment in Scotland - - - 217
64. An Act to amend the Petty Sessions Clerk (Ireland) Act, 1858 - - - 218
65. An Act to amend the Law relating to Advertisements respecting Stolen Goods - 219
66. An Act to make further provision for the Government of British Columbia - - 220
67. An Act to shorten the time of Active Service in the Army, and to amend in certain respects the Law of Enlistment - - - 220
68. An Act to amend the Acts relating to the Militia of the United Kingdom - - 224
69. An Act for further promoting the revision of the Statute Law by repealing certain enactments that have ceased to be in force or are consolidated by certain Acts of the present Session - - - 225
70. An Act to facilitate in certain cases the obtaining of powers for the construction of Gas and Water Works and for the supply of Gas and Water - - - 239
71. An Act for consolidating, with Amendments, certain Enactments relating to the National Debt - - - 245
72. An Act for granting Certificates to Pedlars - - - 255
73. An Act to continue certain Turnpike Acts in Great Britain, to repeal certain other Turnpike Acts, and to make further Provisions concerning Turnpike Roads - - 260
74. An Act to confirm the Award under "The Curragh of Kildare Act, 1868," and for other purposes relating thereto - - 281
75. An Act to provide for public Elementary Education in England and Wales - 312
76. An Act to facilitate the Arrest of Absconding Debtors - - - 338
77. An Act to amend the Laws relating to the qualifications, summoning, attendance, and remuneration of Special and Common Juries - - - 339
78. An Act to facilitate the construction and to regulate the working of Tramways - 343
79. An Act for further regulation of Duties of Postage, and for other purposes relating to the Post Office - - - 362
80. An Act for taking the Census of Ireland 366
81. An Act to amend the Acts of the thirty-seventh year of King George the Third, chapter one hundred and twenty-seven, and the thirtieth and fortieth years of King George the Third, chapter fourteen - - 368
82. An Act to authorise the Commissioners of Her Majesty's Treasury to guarantee the payment of a loan to be raised by the Government of Canada for the construction of fortifications in that country - - - 368
83. An Act to make better provision for the Police Force in the City of Londonderry, and to amend the Acts relating to the Royal Irish Constabulary Force - - - 370
84. An Act to amend the Public Schools Act, 1868 - - - 372
85. An Act to declare the Hundred in which a Piece of Land in the County of Norfolk is situate, and to provide for the Assessment of the said Piece of Land to the County Rate - 373
86. An Act to amend and extend the Act sixteenth and seventeenth Victoria, chapter ninety-two, to make further provision for uniting counties in Scotland in so far as regards the jurisdiction of the Sheriff; and also to make certain provisions regarding the duties of Sheriffs and Sheriffs Substitute in Scotland 374
87. An Act to amend the Act twenty-third and twenty-fourth Victoria, chapter fifty, intituled "An Act to abolish the Annuity Tax in Edinburgh and Montrose, and to make provision in regard to the Stipends of the Ministers in that City and Burgh, and also to make provision for the Patronage of the Church of North Leith;" and to make provision for the abolition of the Annuity Tax within the Parish of Canongate, and for the payment of the Minister of said Parish - 376
88. An Act to extend the Telegraph Acts of 1863, 1869, to the Channel Islands and the Isle of Man - - - 385
89. An Act to enable the Governors of Queen Anne's Bounty to provide Superannuation Allowances for their Officers - - 387
90. An Act to regulate the conduct of Her Majesty's subjects during the existence of hostilities between foreign states with which Her Majesty is at peace - - - 388
91. An Act for the relief of persons admitted to the office of Priest or Deacon in the Church of England - - - 396

92. An Act to amend the Laws for the Election of the Magistrates and Councillors of Royal and Parliamentary Burghs in Scotland - 397
93. An Act to amend the Law relating to the Property of Married Women - - - 400
94. An Act to provide for Superannuation Allowances to Medical Officers of Unions, Districts, and Parishes in England and Wales - 402
95. An Act to authorise the carriage of Naval and Military Stores in Passenger Ships - 403
96. An Act to apply a sum out of the Consolidated Fund to the service of the year ending the thirty-first day of March one thousand eight hundred and seventy-one, and to appropriate the Supplies granted in this Session of Parliament - - - 404
97. An Act for granting certain Stamp Duties in lieu of Duties of the same kind now payable under various Acts, and consolidating and amending provisions relating thereto - 418
98. An Act for consolidating and amending the Law relating to the Management of Stamp Duties - - - 456
99. An Act for the repeal of certain Enactments relating to the Inland Revenue - - 462
100. An Act to amend the Law relating to the repayment to the Consolidated Fund of money expended for the benefit of Greenwich Hospital - - - 468
101. An Act for amending the Sixth Section of the Pensions Commutation Act, 1869 - 468
102. An Act to amend the Law relating to the taking of Oaths of Allegiance on Naturalization - - - 469
103. An Act to continue various expiring Laws - - - 470
104. An Act to facilitate compromises and arrangements between creditors and shareholders of Joint Stock and other Companies in Liquidation - - - 473
105. An Act for appointing a Commission to inquire into the alleged prevalence of the Truck System, and the disregard of the Acts of Parliament prohibiting such system, and for giving such Commission the powers necessary for conducting such Inquiry - - - 474
106. An Act to amend the Sanitary Act, 1866, so far as relates to the City of Dublin - 476
107. An Act for taking the Census of England - - - 478
108. An Act for taking the Census in Scotland - - - 481
109. An Act to abolish certain Real Actions in the Superior Courts of Common Law in Ireland, and further to amend the Procedure in the said Courts; and for other purposes 485
110. An Act to provide for the administration of the Law relating to Matrimonial Causes and Matters, and to amend the Law relating to Marriages, in Ireland - - - 486
111. An Act to make provision in relation to certain Beerhouses not duly qualified according to Law - - - 495
112. An Act to amend the Act of the first and second years of the reign of His late Majesty King William the Fourth, chapter thirty-three, in part, and to afford facilities for obtaining Loans for the erection, enlargement, and improvement of Glebe Houses, and for the acquirement of lands for Glebes, in Ireland 496

---

The Acts contained in the following List, being PUBLIC ACTS of a Local Character, are placed amongst the LOCAL AND PERSONAL ACTS.

vi. An Act to confirm certain Orders made by the Board of Trade under The Sea Fisheries Act, 1868, relating to Boston Deepes and Emsworth.

xxvii. An Act to confirm certain Orders made by the Board of Trade under The Sea Fisheries Act, 1868, relating to the Frith of Forth.

lxxxi. An Act to confirm a Provisional Order under "The Drainage and Improvement of Lands (Ireland) Act, 1863," and the Acts amending the same.

lxxxii. An Act for confirming certain Provisional Orders made by the Board of Trade under The General Pier and Harbour Act, 1861, relating to Alum Bay, Dartmouth, Ilfracombe, Penryn, and Walton-on-the-Naze.

cxiv. An Act to confirm certain Provisional Orders under "The Local Government Act, 1858," relating to the districts of Blackpool, Bristol, Eton, Heckmondwike, Kidderminster, Lincoln, Nottingham, Plymouth, South Molton, Wallasey, and Ware; and for other purposes relative to certain districts under the said Act.

cxv. An Act to confirm Provisional Orders under "The General Police and Improvement (Scotland) Act, 1862," relating to the Burghs of Dunfermline and Perth.

cxvi. An Act for confirming a Scheme of the Charity Commissioners for the Jewish United Synagogues.

cxvii. An Act for confirming a Scheme of the Charity Commissioners for certain charities in

- the parishes of Saint Olave and Saint John in the borough of Southwark.
- xxxii. An Act to confirm a Provisional Order under the "Public Health (Scotland) Act, 1867," relating to the Burgh of Fraserburgh.
- clvi. An Act to confirm a Provisional Order under "The Sewage Utilization Acts," relating to the district of East Barnet.
- clvii. An Act to confirm a Provisional Order under "The Drainage of Lands (Ireland) Act, 1863," and the Acts amending the same.
- clviii. An Act for confirming certain Provisional Orders made by the Board of Trade under "The General Pier and Harbour Act, 1861," relating to Falmouth, Irvine, Kinsale, Mousehole, St. Leonards-on-Sea, and Ventnor.
- clix. An Act for confirming a Provisional Order made by the Board of Trade under "The General Pier and Harbour Act, 1861," relating to Burytisland.
- clxv. An Act to confirm a Provisional Order under the "The Local Government Act, 1858," relating to the district of Merthyr Tydfil.
-

# LIST OF THE LOCAL AND PRIVATE ACTS.

## LOCAL ACTS.

*The Titles to which the Letter P. is prefixed are Public Acts of a Local Character.*

- i. An Act to authorise the Chester United Gas Company to raise additional Capital.
- ii. An Act for supplying the town and parish of Mansfield in the county of Nottingham with Water.
- iii. An Act to enable the Runcorn, Weston, and Halton Waterworks Company to raise additional Capital.
- iv. An Act for extending the powers of "The Leicester Lunatic Asylum and Improvement Act, 1865," and for other purposes.
- v. An Act for better supplying with Gas the borough of Newport and the parishes of Carisbrooke, Whippingham, and St. Nicholas in the Isle of Wight in the county of Southampton; and for other purposes.
- P. vi. An Act to confirm certain Orders made by the Board of Trade under The Sea Fisheries Act, 1868, relating to Boston Deepes and Emsworth.
- vii. An Act to consolidate into one ordinary Stock the separate ordinary Stocks and Shares in the North-eastern Railway Company, and to make other provisions consequent thereon, and in reference to the Share Capital of the Company; and for other purposes.
- viii. An Act to ascertain and commute Commonable and certain other Rights in the Abbot's Wood in the Forest of Dean in Gloucestershire.
- ix. An Act to authorise the abandonment of a portion of the Callander and Oban Railway, to extend the time for the completion of another portion thereof; and for other purposes.
- x. An Act for incorporating "The Airedale Gas Company," and for enabling them to supply Gas to parts of the townships of Idle and Eccleshill, in the West Riding of Yorkshire.
- xi. An Act for incorporating "the Kings Lynn Gas Company," and for enabling them to supply Gas to Kings Lynn and other places in Norfolk.
- xii. An Act for incorporating the Wrexham Gaslight Company, with powers to supply the town of Wrexham and its neighbourhood with Gas; and for other purposes.
- xiii. An Act to authorise the construction of a Railway from the Midland Railway at Chesterfield to Brampton, and Branch Railways or Tramways connected therewith, in the county of Derby; and for other purposes.
- xiv. An Act to enable the Commissioners of Police of the Burgh of Broughty Ferry to purchase the Gasworks of the Broughty Ferry Gaslight Company, and to supply Gas within the said Burgh and District.
- xv. An Act to amend the Acts relating to the Asylum for Female Orphans.
- xvi. An Act to enable the Severn and Wye Railway and Canal Company to extend their railway to the Ross and Monmouth Railway near the River Wye.
- xvii. An Act to enable the local board for the district of Hyde, in the county palatine of Chester, to purchase the Hyde, Werneth, and Newton Waterworks, and to confer upon them other powers with reference thereto.
- xviii. An Act for better supplying with Water the town and parish of Beccles, in the county of Suffolk.
- xix. An Act to amend The Fylde Waterworks Act, 1861, to increase the capital of the Fylde Waterworks Company, to extend and define the limits of supply, to give power to alter the number of directors; and for other purposes.
- xx. An Act to amend and extend the Acts relating to the Millwall Canal Company, to change the name of the Company; and for other purposes.
- xxi. An Act to alter and enlarge some of the powers of "The North British and Mercantile Insurance Company."
- xxii. An Act for better supplying with Water the parishes of Old Shoreham, New Shoreham,



- Kingston-by-Sea, Southwick, Portlade, and Aldrington, in the county of Sussex.
- xxiii. An Act to amend and enlarge the Provisions of "The Southport Waterworks Act, 1854," "The Southport Waterworks Act, 1856," and "The Southport Waterworks Act, 1867," to make further and better Provision for supplying the town of Southport and the adjoining districts with Water; and for other purposes.
- xxiv. An Act for dissolving the Yeadon Waterworks Company limited, and re-incorporating the Proprietors therein with others for more effectually supplying with Water the Township of Yeadon, and certain parts of the Township of Rawden, both in the Parish of Guiseley, in the West Riding of the county of York; and for other purposes.
- xxv. An Act to incorporate the Proprietors of the Chiltern Hills Spring Water Company (Limited), and granting them powers with reference to Supply of Water to the town of Aylesbury and the vicinity thereof; and other purposes.
- xxvi. An Act to incorporate the Brecon Gas Company, and to enable them to supply the town of Brecon with gas; and for other purposes relating to the Company.
- P. xxvii. An Act to confirm certain Orders made by the Board of Trade under The Sea Fisheries Act, 1868, relating to the Frith of Forth.
- xxviii. An Act to confer further powers on the Wolverhampton and Walsall Railway Company.
- xxix. An Act to grant further powers to the Newport Pagnell Railway Company.
- xxx. An Act to incorporate the Eccleshill and Bolton Gas Company, Limited, and to make further provision for lighting certain parts of the townships of Eccleshill and Bolton with Gas; and for other purposes.
- xxxi. An Act for the making of a Railway from Golspie to Helmsdale in the county of Sutherland, and for the abandonment of part of the authorised railway of the Sutherland Railway Company; and for other purposes.
- xxxi. An Act to authorise the construction of a Bridge over the river Trent in the county of Nottingham, and Roads and Approaches thereto, to be called "the Gunthorpe Bridge."
- xxxi. An Act to constitute a body of Commissioners, and to empower them to purchase certain shipping dues from His Royal Highness the Prince of Wales; and also to provide for the alteration and ultimate extinction of such shipping dues, and for raising moneys; and for other purposes.
- xxxiv. An Act to vest Fosdyke Bridge and certain property connected therewith in the inhabitants of the parts of Holland in Lincolnshire as a county bridge and county property.
- xxxv. An Act for vesting in the Corporation of Paisley the supply of Gas to that town and the suburbs thereof; and for other purposes.
- xxxvi. An Act to confer various powers upon the Great Eastern Railway Company with respect to the Ramsey branch of the said Company, and the Tending Hundred Railway; and for other purposes.
- xxxvii. An Act for better raising and securing a Fund for the Widows and Children of the Officers, Agents, Clerks, and Porters of the Royal Bank of Scotland.
- xxxviii. An Act for dissolving the Saint Alban's Gas and Water Company, and re-incorporating the proprietors therein with others for more effectually supplying with Gas the borough of Saint Alban and other adjoining parishes and places; and for other purposes.
- xxxix. An Act to extend the Time for the compulsory purchase of Lands for the purposes of the North Metropolitan Railway Act, 1867.
- xl. An Act for incorporating and granting further powers to the Hebden Bridge Gas Company.
- xli. An Act for making a Railway from the Hawthornden station of the Peebles Railway to Penicuik in the county of Edinburgh; and for other purposes.
- xlii. An Act to amend two Acts for repressing Juvenile Delinquency in the City of Glasgow.
- xliii. An Act to enable the Local Board for the District of Aberdare to erect Waterworks and supply Water; to purchase the Undertaking of the Aberdare Waterworks Company; and for other purposes.
- xliv. An Act for conferring various additional powers upon the Caledonian Railway Company; and for other purposes.
- xlv. An Act to empower the corporation of Northampton to establish Markets and Fairs; and for other purposes.
- xlvi. An Act to authorise the Construction of the Edinburgh, Loanhead, and Roslin Railway.
- xlvii. An Act to enable the Metropolitan and Saint John's Wood Railway Company to abandon the authorised Extension of their Railway to Hampstead; and for other purposes.
- xlviii. An Act for authorising the Corporation of the Royal Infirmary of Edinburgh to remove their infirmary buildings to a more suitable position, and to acquire for that purpose the site of George Watson's Hospital and adjacent lands; and for other purposes.

- xlix. An Act to extend the time for completing the works of the Milford Haven Dock and Railway Company; to lease the undertaking; and for other purposes.
- l. An Act for extending the time for the completion of the Bedford and Northampton Railway.
- li. An Act for enabling the Reading Gas Company to raise additional Capital; to construct new Works; for extending their Limits of Supply; and for other purposes.
- lii. An Act for making alterations in the authorised Metropolitan Railways of the Great Eastern Railway Company, and for extending the time for the completion thereof; and for conferring upon that Company and upon certain other companies other powers in connexion with the said railways; and for other purposes.
- liii. An Act for empowering the Mayor, Aldermen, and Burgesses of the city and borough of Bath to more effectually supply with Water the city and borough of Bath; and for other purposes.
- liv. An Act to authorise the Trustees of the Clyde Navigation to construct a Dock or Tidal Basin, Quays, Tramways, and other works at the Harbour of Glasgow; to abandon certain works, and to borrow additional money; and for other purposes.
- lv. An Act to enlarge the powers of the East London Railway Company for the compulsory purchase of lands and for the completion of works, and to enable them to raise further money; to confirm and authorise agreements between the East London and other Railway Companies; and for other purposes.
- lvi. An Act for the transfer to the mayor, aldermen, and burgesses of the borough of Leeds of the undertakings of the Leeds Gaslight Company and the Leeds New Gas Company; and for other purposes.
- lvii. An Act for better supplying with Water the town of Ruabon and places adjacent, in the county of Denbigh.
- lviii. An Act to authorise the Limerick and Ennis Railway Company to cancel certain authorised but unissued Shares, and to borrow on Mortgage in lieu thereof, and to issue Debenture Stock; and for other purposes.
- lix. An Act to authorise the Limerick and Foynes Railway Company to cancel certain authorised but unissued Preference Shares, and to borrow on Mortgage in lieu thereof, and to issue Debenture Stock; and for other purposes.
- lx. An Act to confer further powers on the Company of Proprietors of the Birmingham Canal Navigations; and for other purposes.
- lxi. An Act to enable the Gloucester and Berkeley Canal Company to extend and improve their works, to convert their existing capital into stock; and for other purposes.
- lxii. An Act to enlarge the powers of the London and Blackwall Railway Company, and to enable them to abandon certain Railways authorised by "The London, Blackwall, and Milwall Extension Railway Act, 1865."
- lxiii. An Act for conferring additional powers on the Midland Railway Company for the construction of works, and for the raising of further capital; and for other purposes.
- lxiv. An Act to extend the Limits and increase the Capital of the Shipley Gaslight Company; and for other purposes.
- lxv. An Act to authorise the construction of a Bridge over the River Ouse in the county of York, to be called "Cawood Bridge."
- lxvi. An Act to authorise the Waterworks Commissioners of Kirkcaldy and Dysart to raise a further sum of money, and to amend "The Kirkcaldy and Dysart Waterworks Act, 1867;" and for other purposes.
- lxvii. An Act to extend the time for the completion of Stapenhill Bridge at Burton-upon-Trent.
- lxviii. An Act for more effectually lighting with Gas Buxton and other places in Derbyshire.
- lxix. An Act to enable the Local Board for the district of Cleckheaton to make and supply Gas, and to purchase the undertaking of the Cleckheaton Gas Company, to confer other powers in relation to Gas on the said Local Board; and for other purposes.
- lxx. An Act for granting further powers to the Imperial Continental Gas Association.
- lxxi. An Act to enable the Great Northern Railway Company to abandon the construction of the Watford and Edgware Railway.
- lxxii. An Act to authorise the Dare Valley Railway Company to raise additional capital, to abandon a portion of their authorised railway, and to lease their undertaking to the Taff Vale Railway Company; and for other purposes.
- lxxiii. An Act to authorise the Llantrissant and Taff Vale Junction Railway Company to abandon the construction of a certain railway authorised by "The Llantrissant and Taff Vale Junction Railway Act, 1866;" and to extend the time for the completion of another railway authorised by the same Act; and to lease their undertaking to the Taff Vale Railway Company; and for other purposes.
- lxxiv. An Act for the revival of the powers and extension of the time for the compulsory purchase of lands and completion of the railway

- authorised by "The Girvan and Portpatrick Junction Railway Act, 1865," and also for enabling the Girvan and Portpatrick Junction Railway Company to divide and convert the shares in their capital into preferred and deferred shares; and for other purposes.
- lxxv. An Act for extending the limits within which the Cardiff Gaslight and Coke Company may supply Gas, and for empowering the Company to raise additional Capital; and for other purposes.
- lxxvi. An Act incorporating and conferring further powers on the Carmarthen Gas Company.
- lxxvii. An Act to incorporate a Company for better supplying with Gas and Water the township of Rainhill, in the parish of Prescott and county palatine of Lancaster; and for other purposes.
- lxxviii. An Act for the abandonment of the extension authorised by "The Blane Valley Railway Extension Act, 1865;" and for other purposes.
- lxxix. An Act for authorising the Lancashire and Yorkshire Railway Company and the London and North-western Railway Company to run Steam Vessels between Fleetwood and Belfast; and for other purposes.
- lxxx. An Act for conferring powers on the Lancashire and Yorkshire Railway Company for the construction of a railway and other works, and the acquisition of lands, in the west riding of the county of York and the county of Lancaster; and for other purposes.
- P. lxxxi. An Act to confirm a Provisional Order under "The Drainage and Improvement of Lands (Ireland) Act, 1863," and the Acts amending the same.
- P. lxxxii. An Act for confirming certain Provisional Orders made by the Board of Trade under The General Pier and Harbour Act, 1861, relating to Alum Bay, Dartmouth, Ilfracombe, Penryn, and Walton-on-the-Naze.
- lxxxiii. An Act for vesting in the Great Western Railway Company the undertaking of the Company of Proprietors of the Herefordshire and Gloucestershire Canal Navigation; and for other purposes.
- lxxxiv. An Act for enabling the London and North-western and the Lancashire and Yorkshire Railway Companies to alter and enlarge their station at Preston, and in connexion therewith to acquire lands and execute certain works, and for authorising Agreements between the Companies in reference to those and other matters; and for other purposes.
- lxxxv. An Act to incorporate the Colne Fishery Company, and to authorise the demise to them of the Fishery of the River Colne.
- lxxxvi. An Act to enable the Dublin and Antrim Junction Railway Company to raise further moneys by borrowing; and for other purposes.
- lxxxvii. An Act for carrying into effect Arrangements with respect to Commons parcel of the Manor of the City of Lincoln.
- lxxxviii. An Act to make provision for supplying the Borough of Yeovil with Water; for amending "The Borough of Yeovil Extension and "Improvement Act, 1854;" and for other purposes.
- lxxxix. An Act to extend for a further period the Time for the Construction of a Portion of the Railway authorised by the Great Northern and Western (of Ireland) Railway Act, 1861; and for other purposes.
- xc. An Act to authorise the Tyne Improvement Commissioners to collect certain Coal and other Dues now collected by the Mayor, Aldermen, and Burgesses of the borough of Newcastle-upon-Tyne, and to apply the whole thereof to the Tyne Improvement Fund; and for other purposes.
- xc. An Act to amend "The Edinburgh and Bathgate Railway Act, 1846," with respect to the Rents payable under the Lease thereby authorised; and for other purposes.
- xcii. An Act for the abandonment of the authorised street from the Thames Embankment below Charing Cross railway bridge to Wellington Street, Strand; and for other purposes.
- xciii. An Act for making further provision with respect to the Sanitary Condition of the Borough of Leeds; and for other purposes.
- xciv. An Act to enable the Metropolitan District Railway Company to make a Station near Bread Street, and for other purposes with respect to the same Company.
- xcv. An Act for amending and extending the Acts relating to the supply of Water and Gas in the borough of Halifax and its neighbourhood, and to the improvement of that borough; and for other purposes.
- xcvi. An Act to enable the lord mayor, aldermen, and burgesses of Dublin to enlarge and extend portions of the Dublin Corporation Waterworks; to amend the Dublin Corporation Waterworks Acts, 1861, 1863, and 1866; to construct additional filter beds; to lay down additional mains or pipes; to consolidate their powers; to confirm agreements; and for other purposes.
- xcvii. An Act to authorise the Belfast Harbour Commissioners to sell their surplus lands, and to make leases.
- xcviii. An Act to enable the Sevenoaks, Maidstone, and Tunbridge Railway Company to make a deviation of their authorised railway;

- to extend the time for making a part of the same; and for other purposes.
- xcix. An Act to amalgamate the Atlantic Telegraph Company with the Anglo-American Telegraph Company, and to provide for the dissolution of the Atlantic Telegraph Company; and for other purposes.
- c. An Act for making Intercepting and Outfall Sewers for Brighton and certain neighbouring districts; and for other purposes.
- ci. An Act to lease the Great Northern and Western (of Ireland) Railway to the Midland Great Western Railway (of Ireland) Company; and for other purposes.
- cii. An Act for conferring additional powers upon the Company of Proprietors of the Skipton Waterworks with reference to their undertaking and the raising of money; and for other purposes.
- ciiii. An Act to extend the time for the construction by the Metropolitan Railway Company of the Tower Hill Extension.
- civ. An Act to authorise Alterations in the Stobcross Railways and other works; to confer Powers upon the Trustees of the Clyde Navigation and others in reference to the Stobcross undertaking; to extend the time for the Purchase of Land and completion of various Railways; to convert Port Edgar into a Harbour; to provide for the Conversion of the Leadburn Preference Stock into Ordinary Stock, and for the Consolidation of the Lien Stocks of the North British Railway Company; and for other purposes.
- cv. An Act for enabling the North-eastern Railway Company to construct a railway from Leyburn to Hawes, and other works, and acquire additional lands; for the abandonment of the authorised Hawes and Melmerby Railway; and for vesting in the Company the undertaking of the West Durham Railway Company; and for other purposes.
- cvi. An Act for empowering the Brighton and Hove General Gas Company to construct works at or near New Shoreham Harbour, and to acquire a site for the same; and for other purposes.
- cvi. An Act to extend the time for the completion of the Railway and Works of the Navan and Kings Court Railway Company, to enable that Company to enter into working and other agreements with certain Companies; and for other purposes.
- cvi. An Act for the arrangement by Arbitration of the Affairs of the Newry and Armagh Railway Company.
- cix. An Act for the Abandonment of the Railways authorised by "The Tottenham and Hampstead Junction Railway Act, 1865;" and for other purposes.
- cx. An Act for making railways from Barnstaple to Ilfracombe; and for other purposes.
- cxi. An Act to enable the Downpatrick, Dundrum, and Newcastle Railway Company to grant a lease of their undertaking; and for other purposes.
- cxii. An Act for conferring additional powers on the London and North-western Railway Company in relation to their own undertaking and the undertakings of other Companies; and for other purposes.
- cxiii. An Act for extending the limits of the district under the authority of the West Hartlepool Improvement Commissioners, and for making better provision for the improvement and government of the extended district; and for other purposes.
- P. cxiv. An Act to confirm certain Provisional Orders under "The Local Government Act, 1858," relating to the districts of Blackpool, Bristol, Eton, Heckmondwike, Kidderminster, Lincoln, Nottingham, Plymouth, South Molton, Wallasey, and Ware; and for other purposes relative to certain districts under the said Act.
- P. cxv. An Act to confirm Provisional Orders under "The General Police and Improvement (Scotland) Act, 1862," relating to the Burghs of Dunfermline and Perth.
- P. cxvi. An Act for confirming a scheme of the Charity Commissioners for the Jewish United Synagogues.
- P. cxvii. An Act for confirming a scheme of the Charity Commissioners for certain charities in the parishes of Saint Olave and Saint John in the borough of Southwark.
- cxviii. An Act for conferring on the London and North-western Railway Company additional powers, and making further provision with respect to steam communication between Holyhead and Ireland; and for other purposes.
- cxix. An Act for supplying Littlehampton and certain adjacent parishes in the county of Sussex with Water.
- cxx. An Act for the better management of the Town Moor of the borough of Newcastle-upon-Tyne, and for the further improvement and better government of the borough; and for other purposes.
- cxxi. An Act to enable the Gaslight and Coke Company to purchase the undertaking of the Victoria Docks Gas Company; and for other purposes.
- cxxii. An Act for authorising an Extension of the existing railway of the Midland Counties and South Wales Railway Company to the Buckinghamshire Railway, and for reviving the powers and extending the time for purchase of lands and

- construction of works authorised by a former Act of the Company; and for suspending legal proceedings against the Company; and for altering the financial arrangements of the Company; and for other purposes.
- cxix. An Act for extending the limits within which the Newcastle and Gateshead Water Company may supply water, and for empowering them to construct additional works, and to raise additional capital; and for other purposes.
- cx. An Act to authorise the construction of a Subway under the Thames between Southwark and the City of London.
- cxi. An Act to extend the time for the completion of the Wandsworth Bridge and Approaches; and for other purposes.
- cxii. An Act to confer additional powers on the Dublin, Wicklow, and Wexford Railway Company for the construction of works and other matters relating to their undertaking; and to enable the Company and the London and North-western Railway Company to make traffic arrangements; and other purposes.
- cxiii. An Act to enable the Pembroke and Tenby Railway Company to extend their railway to Pembroke Dockyard, and to make arrangements with the Admiralty; and for other purposes.
- cxiv. An Act to authorise the Company of Proprietors of the Birmingham Waterworks to extend their limits of supply, to construct further works; and for other purposes.
- cxi. An Act for amending and extending the provisions of the Acts relating to the borough of Salford; for authorizing certain street improvements; and for other purposes.
- cxvi. An Act to authorise the Bristol and North Somerset Railway Company to deviate from the authorised line of their Railway at Radstock; and for other purposes.
- cxvii. An Act for making better provision for the supply of Water to a district consisting of the boroughs of Ashton-under-Lyne and Stalybridge, and the district of the Dukinfield Local Board of Health, and their respective neighbourhoods; and for other purposes.
- P. cxviii. An Act to confirm a Provisional Order under the "Public Health (Scotland) Act, 1867," relating to the Burgh of Fraserburgh.
- cxix. An Act for enabling the Local Board of Health in and for the District of the Borough of Reading to execute certain works for the Improvement of the Water Supply and Sewerage of the Borough, and the Drainage of Lands in and adjoining thereto; and for other purposes.
- cx. An Act to extend the time for the compulsory purchase of lands and completion of the Waterworks authorised by the Act relating to the Rotherham and Kimberworth Local Board of Health; and to authorise the said board to construct Gasworks, and to purchase the undertaking of the Rotherham Gaslight and Coke Company; and to authorise various agreements with respect to Water and Gas; and for other purposes.
- cxi. An Act to authorise the North British Railway Company to make railways and a bridge across the Tay near Dundee, to connect their system with the railways of the Caledonian Railway Company east and west of Dundee; and for other purposes.
- cxii. An Act to enable the Ryde Pier Company to extend their railway to the station of the Isle of Wight Railway at Ryde; and for other purposes relating thereto.
- cxiii. An Act for granting further powers to "The Saint Helens Gas Company."
- cxiv. An Act to incorporate a Company for establishing and holding a Market and Fairs in the town and parish of Thrapston, in the County of Northampton; and for other purposes.
- cxv. An Act to extend the powers of the Dublin Trunk Connecting Railway Company for the taking of lands and completion of their undertaking, to change the name of the Company; and for other purposes.
- cxi. An Act for conferring further powers on the Great Western Railway Company in relation to their own undertaking and the undertakings of other Companies; and for other purposes.
- cxii. An Act to extend the time for the purchase of lands and for the construction of the Halifax and Ovenden Junction Railway, and to vest the said railway in the Lancashire and Yorkshire and the Great Northern Railway Companies.
- cxiii. An Act to amend the Exmouth Docks Act, 1864.
- cxiv. An Act to extend and define the Limits of the Borough of Enniskillen; to enable the Commissioners for that Borough to construct Waterworks, and supply Water; and for other purposes.
- cxi. An Act for empowering the Corporation of Oldham to construct additional Waterworks, and for extending their limits of supply of Water and Gas, and for amending The Oldham Borough Improvement Act, 1865; and for other purposes.
- cxii. An Act to authorise the Construction of Railways in the City of Worcester; and for other purposes.

- cxlvi. An Act to enable the Bury Saint Edmunds and Thetford Railway Company to make a Deviation in their authorised Railway; and for other purposes.
- cxlvii. An Act for empowering the South-eastern Railway Company to abandon certain authorised Lines, and for extending the time for purchase of Lands and Completion of Works of certain other Lines, and for making better provision respecting Hotels, and for amending the Company's Acts; and for other purposes.
- cxlviii. An Act to extend the time for purchase of Lands, and for the completion of the Harborne Railway.
- cxlix. An Act for extending and amending the Acts relating to the Navigation and Conservancy of the Thames; and for other purposes.
- cl. An Act to extend the time and continue the powers granted to the Halesowen and Bromsgrove Branch Railways Company for the compulsory purchase of Lands, and for the completion of Railways in the County of Worcester, and to authorise that Company to abandon a certain Railway in the same county; and for other purposes.
- cli. An Act for extending the time for the completion of the authorised works of the Burnham Tidal Harbour Company.
- clii. An Act for extending the time for the completion of the Teign Valley Railway, and for conferring additional powers upon the Teign Valley Railway Company; and for other purposes; and of which the short title is "Teign Valley Railway Act, 1870."
- cliii. An Act for making a Railway extending from the authorised Newport Railway to Long Craig, in the County of Fife; for abandoning the Newport Deviation Railway; and for other purposes.
- cliv. An Act to authorise the London, Brighton, and South Coast Railway Company to abandon the Worthing Junction, and to make a short Railway for improving the communication with Eastbourne, and to acquire additional Lands, and to sanction Agreements between them and the South-eastern Railway Company; and for other purposes.
- clv. An Act for making better provision for the Cure of Souls within the limits of the Parish of Leverington, and of certain adjacent Parishes, all in the County of Cambridge and the Diocese of Ely.
- P. clvi. An Act to confirm a Provisional Order under "The Sewage Utilization Acts," relating to the district of East Barnet.
- P. clvii. An Act to confirm a Provisional Order under "The Drainage of Lands (Ireland) Act, 1863," and the Acts amending the same.
- P. clviii. An Act for confirming certain Provisional Orders made by the Board of Trade under The General Pier and Harbour Act, 1861, relating to Falmouth, Irvine, Kinsale, Mousehole, St. Leonards-on-Sea, and Ventnor.
- P. clix. An Act for confirming a Provisional Order made by the Board of Trade under The General Pier and Harbour Act, 1861, relating to Burntisland.
- clx. An Act to enable the Corporation of Blackburn to construct Works for Sewage Utilization; to acquire Lands for that purpose; to provide a Cattle Market; to improve the Borough; and to raise further Moneys; and to confer upon the Corporation additional Powers; and for other purposes.
- clxi. An Act to give further time for the completion of the Works authorised by "The Alexandra (Newport) Dock Act, 1865, and for the compulsory purchase of Lands for the Railways by that Act authorised; and for other purposes.
- clxii. An Act for facilitating the Sale and Transfer of the Property or Undertaking of the Dagenham (Thames) Dock Company, in liquidation; and for other purposes.
- clxiii. An Act for extending the Powers of the Newry and Greenore Railway Company.
- clxiv. An Act for extending the time for the completion of the Poole and Bournemouth Railway, and of which the short title is "Poole and Bournemouth Railway Act, 1870."
- P. clxv. An Act to confirm a Provisional Order under "The Local Government Act, 1858," relating to the district of Merthyr Tydfil.
- clxvi. An Act for dissolving the Ellesmere and Glyn Valley Railway Company and re-incorporating the same as "The Glyn Valley Tramway Company," with power to construct Tramways; and for other purposes.
- clxvii. An Act to authorise the Pimlico, Peckham, and Greenwich Street Tramways Company to construct additional passing places and to convert certain of their authorised Tramways into double lines of Tramway; and for other purposes.
- clxviii. An Act to authorise the Construction of Tramways from Birmingham in the county of Warwick to Handsworth, West Bromwich, and Tipton in the county of Stafford; and for other purposes.
- clxix. An Act to authorise the Construction of Tramways in the towns of Plymouth, Stonehouse, and Devonport, in the county of Devon; and for other purposes.
- clxx. An Act to authorise the Construction of Street Tramways in the borough of Portsmouth; and for other purposes.

- clxxi. An Act to authorise the Construction of Street Tramways in certain parts of the Metropolis; and for other purposes.
- clxxii. An Act to empower the North Metropolitan Tramways Company to construct new Street Tramways; and for other purposes.
- clxxiii. An Act to authorise the Metropolitan Street Tramways Company to extend their Tramways; and for other purposes.
- clxxiv. An Act to authorise the Pimlico, Peckham, and Greenwich Street Tramways Company to extend their authorised Tramways; and for other purposes.
- clxxv. An Act to authorise the Construction of Street Tramways in certain parts of the city of Glasgow and its suburbs; and for other purposes.
- clxxvi. An Act for enabling the Liverpool Tramways Company to make new Street Tramways in Toxteth Park, in extension of their authorised undertaking; and for other purposes.
- clxxvii. An Act to authorise the Construction of Street Tramways in certain parts of the Suburbs of Birmingham; and for other purposes.

---

## PRIVATE ACTS,

PRINTED BY THE QUEEN'S PRINTER,

AND WHEREOF THE PRINTED COPIES MAY BE GIVEN IN EVIDENCE.

---

- 1. An Act to enlarge the Powers of an Act enabling the Rector of the Parish of Saint Luke, Chelsea, in Middlesex, to grant Building and Repairing Leases.
- 2. An Act for the Extension of the Owens College, Manchester; and for other purposes.
- 3. An Act for enabling the trustees of the will of the late Right Honorable James Mann Earl Cornwallis, deceased, to improve and develop his estate at Hastings; and for other purposes.
- 4. An Act to amend "An Act to authorise the borrowing of money on the security of the entailed estate of Downie Park, in the county of Forfar, or the sale of a portion of the estate, for the purpose of paying the debts and legacies affecting the same;" and to make further provision for the sale of the estate.

# INDEX

TO THE

## PUBLIC GENERAL ACTS,

38 & 34 VICTORIA.—A.D. 1870.

NOTE.—The capital letters placed after the chapter have the following signification :—

E. <i>that the Act relates to</i>	England (and Wales, if it so extend).
S.       "       "	Scotland exclusively.
I.       "       "	Ireland exclusively.
E. & I.   "       "	England and Ireland.
E. & S.   "       "	England and Scotland.
U.K.     "       "	Great Britain and Ireland (and Colonies, if it so extend).
C.       "       "	The Colonies, or either of them.

\* \* The Acts are indexed under every head occurring in the Title.

	Cap. Relating to		Cap. Relating to
Absconding Debtors, to facilitate the Arrest of	76. E.	Admiralty District Registrar; for establishing a District Registrar of the High Court of Admiralty at Liverpool	45. E.
Actions Abolition; to abolish certain Real Actions in the Superior Courts of Common Law in Ireland, and further to amend the Procedure in the said Courts; and for other purposes	109. I.	Advertisements; to amend the Law relating to Advertisements respecting Stolen Goods	65. E. & I.
Acts Continuance. <i>See</i> Expiring Laws. Turnpike Trusts.		Advowsons; to facilitate Transfers of Ecclesiastical Patronage in certain cases	39. E.
Acts Repeal. <i>See</i> Inland Revenue. Statute Law Revision.		Aliens; to amend the Law relating to the legal condition of Aliens and British Subjects	14. U.K.
Administration of Justice. <i>See</i> Absconding Debtors. Arrestment of Wages. Attachment of Wages. Attorneys and Solicitors. Clerk of Petty Sessions. Common Law. Criminals. Evidence. Extradition. Felony. Forgery. Judges Jurisdiction. Juries. Larceny. Liverpool Admiralty. Magistrates. Naturalization. Notices, &c. Peace Preservation. Poisons. Property of Married Women. Protection of Inventions. Real Actions Abolition. Sheriffs. Stolen Goods. Treason.		— to amend the Law relating to the taking of Oaths of Allegiance on Naturalization. [ <i>Amending preceding Act.</i> ]	102. U.K.
		Annual Turnpike Acts Continuance. <i>See</i> Turnpike Trusts.	
		Annuity Tax; to amend the Act 23 & 24 Vict. c. 50, "to abolish the Annuity Tax in Edinburgh and Montrose, and to make provision in regard to the Stipends of the Ministers in that City and Burgh, and also to make provision for the Patronage of the Church of North Leith;" and to make provision for the	



	Cap. Relating to		Cap. Relating to
abolition of the Annuity Tax within the Parish of Canon-gate, and for the payment of the Minister of said Parish -	87. S.	Board of Works. <i>See</i> Metro-politan Board of Works.	
Apportionment of Rents, &c.; for the better Apportionment of Rents and other periodical payments -	35. E. & I.	Bonds. <i>See</i> Exchequer Bonds.	
Appropriation of Supplies; to apply a sum out of the Con-solidated Fund to the service of the year ending 31st March 1871, and to appropriate the Supplies granted in this Ses-sion of Parliament -	96. U.K.	Boundaries. <i>See</i> Inverness, &c. Norfolk.	
Army; for punishing Mutiny and Desertion, and for the better payment of the Army and their Quarters -	7. U.K.	Bridgwater and Beverley, to dis-franchise the Boroughs of -	21. E.
— to shorten the time of Active Service in the Army, and to amend in certain re-spects the Law of Enlistment -	67. U.K.	British Columbia, to make fur-ther provision for the Govern-ment of -	66. C.
Arrest of Absconding Debtors; to facilitate -	76. E.	Brokers (City of London); to relieve the Brokers of the City of London from the supervision of the Court of Mayor and Aldermen of the said city -	60. E.
Arrestment of Wages; to limit Wages Arrestment in Scotland -	63. S.	Burghs, Scotland. <i>See</i> Municipal Elections. Petty Customs.	
— <i>See also</i> Attachment of Wages.			
Assurance Companies; to amend the law relating to Life Assu-rance Companies -	61. U.K.	Canada Defences; to authorise the Commissioners of Her Ma-jesty's Treasury to guarantee the payment of a Loan to be raised by the Government of Canada for the construction of Fortifications in that country -	82. C.
Attachment of Wages; to abolish Attachment of Wages -	30. E.	Canongate. <i>See</i> Edinburgh, &c.	
— <i>See also</i> Arrestment of Wages.		Carriage of Stores; to authorise the Carriage of Naval and Military Stores in Passenger Ships -	95. U.K.
Attorneys and Solicitors; to amend the Law relating to the Remuneration of Attorneys and Solicitors -	28. E. & I.	Cashel, to disfranchise the Borough of -	38. I.
Auctioneers Licences. <i>See</i> In-land Revenue.		Cattle Disease; to amend the Cattle Disease Act (Ireland), 1866 (29 & 30 Vict. c. 4.) -	36. I.
		Census of United Kingdom; for taking the Census of England -	107. E.
		— for taking the Census of Ireland -	80. I.
		— for taking the Census in Scotland -	108. S.
		Certificates to Pedlars, for grant-ing -	72. U.K.
		Channel Islands; to extend the Telegraph Acts of 1868, 1869 (31 & 32 Vict. c. 110 and 32 & 33 Vict. c. 73.) to the Channel Islands and the Isle of Man -	88. U.K.
		Charitable Funds Investment; to amend the law as to the In-vestment on Real Securities of Trust Funds held for public and charitable purposes -	34. U.K.
		Chemists, &c. <i>See</i> Sale of Poisons.	
		Church of England. <i>See</i> Clerical Disabilities. Ecclesiastical Patronage.	
		City of London. <i>See</i> Brokers.	
Bank of Ireland. <i>See</i> Dividends and Stock.			
Bankrupts. <i>See</i> Absconding Debtors.			
Beerhouses; to amend and con-tinue the Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27.) -	29. E.		
— to make provision in rela-tion to certain Beerhouses not duly qualified according to Law -	111. E.		
Beverley, to disfranchise the Borough of -	21. E.		
Bills in Parliament. <i>See</i> Pro-visional Orders Bills.			
Bleaching and Dyeing Works. <i>See</i> Factories and Workshops.			

	Cap. Relating to		Cap. Relating to
Clerical Disabilities; for the relief of persons admitted to the office of Priest or Deacon in the Church of England -	91. E.	Constabulary; to make better provision for the Police Force in the City of Londonderry, and to amend the Acts relating to the Royal Irish Constabulary Force -	83. I.
Clerk of Petty Sessions; to amend the Petty Sessions Clerk (Ireland) Act, 1858 (21 & 22 Vict. c. 100.) -	64. I.	Continuance of Acts. <i>See</i> Expiring Laws. Turnpike Trusts.	
Coinage; to consolidate and amend the Law relating to the Coinage and Her Majesty's Mint -	10. U.K.	Contracts; to render valid certain Contracts informally executed in India -	59. C.
Collector-General of Rates. <i>See</i> Dublin.		Conveyance of Paupers. <i>See</i> Poor, &c.	
Colonies, Acts relating exclusively to. <i>See</i> British Columbia. Canada. India. New Zealand. Siam and Straits Settlements.		Corn, to repeal certain Duties of Customs on, in the Isle of Man	12. U.K.
Commissioner of Supply. <i>See</i> Magistrates, &c.		Costs. <i>See</i> Provisional Orders Bills.	
Common Juries; to amend the Laws relating to the qualifications, summoning, attendance, and remuneration of Special and Common Juries -	77. E.	County Courts (Buildings); to transfer to the Commissioners of Her Majesty's Works and Public Buildings the property in and control over the buildings and property of the County Courts in England, and for other purposes relating thereto	15. E.
Common Law Courts; to extend the Jurisdiction of the Judges of the Superior Courts of Common Law at Westminster -	6. E.	County Rate. <i>See</i> Norfolk Boundary.	
— to abolish certain Real Actions in the Superior Courts of Common Law in Ireland, and further to amend the Procedure in the said Courts; and for other purposes -	109. I.	Criminals, Extradition of, for amending the Law relating to	52. U.K.
Commutation of Pensions. <i>See</i> Pensions Commutation.		Curragh of Kildare; to confirm the Award under The Curragh of Kildare Act, 1868 (31 & 32 Vict. c. 60.), and for other purposes relating thereto -	74. I.
Companies. <i>See</i> Joint Stock Companies. Life Assurance Companies.		Customs (Isle of Man); to repeal certain Duties of Customs [on Corn] in the Isle of Man -	12. U.K.
Confectionery. <i>See</i> Customs and Inland Revenue.		— to alter certain Duties of Customs upon Refined Sugar in the Isle of Man -	43. U.K.
Consolidated Fund; to apply certain sums out of the Consolidated Fund to the service of the years ending 31st March 1869, 1870, 1871, and preceding years -	5. U.K.	Customs and Inland Revenue; to grant certain Duties of Customs and Inland Revenue, and to repeal and alter other Duties of Customs and Inland Revenue. [Sugar, and Sugar for Brewing; Confectionery, &c.; Perfumed Spirits; Income Tax; Licenses to Hawkers, and to Makers of Soap, Paper, Playing-cards, and Stills; Plate Licenses, Auctioneers' Licenses; Grain for Animals; Husbandry Horses; Stamp Duties on Newspapers and on certain Policies of Insurance.] -	32. U.K.
— to apply the sum of 9,000,000 <i>l.</i> out of the Consolidated Fund to the service of the year ending the 31st March 1871 -	31. U.K.	— <i>See also</i> Inland Revenue.	
— to apply a sum out of the Consolidated Fund to the service of the year ending 31st March 1871, and to appropriate the Supplies granted in this Session of Parliament -	96. U.K.	Customs, Petty. <i>See</i> Petty Customs Abolition.	

Cap. Relating to	Cap. Relating to
Deacons in Church of England. <i>See</i> Clerical Disabilities.	of Canongate, and for the pay- ment of the Minister of said Parish - - - 87. S.
Debentures; to amend the Mort- gage Debenture Act, 1865 (28 & 29 Vict. c. 78.) - - 20. E.	Education; to provide for public Elementary Education in Eng- land and Wales - - - 75. E.
Debtors; to facilitate the arrest of Absconding Debtors - 76. E.	— to amend the Public Schools Act, 1868. (31 & 32 Vict. c. 118.) 84. E.
Desertion. <i>See</i> Mutiny.	Elections, Parliamentary. <i>See</i> Parliamentary Franchise.
Disease. <i>See</i> Cattle Disease.	Elementary Education; to pro- vide for public Elementary Education in England and Wales - - - 75. E.
Disfranchisement. <i>See</i> Bridg- water and Beverley, Dublin. Norwich. Sligo and Cashel.	Elgin County. <i>See</i> Inverness, &c.
Dissolved Boards of Manage- ment, &c.; to make provision for the proceedings of Boards of Management and Boards of Guardians upon the dissolu- tion of Districts and Unions or the annexation of Parishes to Unions - - - 2. E.	Enlistment; to shorten the time of Active Service in the Army, and to amend in certain respects the Law of Enlistment - - 67. U.K.
Dividends and Stock; for ex- tending to Ireland and amend- ing the Dividends and Stock Act, 1869 (32 & 33 Vict. c. 104.) 47. U.K.	Enlistment (Foreign); to regulate the conduct of Her Majesty's Subjects during the existence of hostilities between Foreign States with which Her Majesty is at peace - - - 90. U.K.
[Both Acts repealed by 33 & 34 Vict. c. 69., and other provisions made by 33 & 34 Vict. c. 71. <i>See</i> National Debt.]	Established Church. <i>See</i> Clerical Disabilities. Ecclesiastical Pa- tronage.
Dublin; to enable the officers employed in the Collector- General of Rates office in the City of Dublin to vote at Par- liamentary Elections for that City - - - 11. I.	Estates, Settled. <i>See</i> Settled Estates.
— to disfranchise certain	Evidence; to explain and amend the Evidence Further Amend- ment Act, 1869 (32 & 33 Vict. c. 68.) - - - 49. E. & I.
Voters of the City of Dublin - 54. I.	Exchequer Bonds; raising the sum of 1,300,000l. by Exche- quer Bonds for the service of the year ending 31st March 1871 - - - 41. U.K.
— to amend the Sanitary Act, 1866, so far as relates to the City of Dublin - - - 106. I.	Excise. <i>See</i> Inland Revenue.
Dyeing Works. <i>See</i> Factories and Workshops.	Exhibitions (International). <i>See</i> Protection of Inventions.
East India. <i>See</i> India.	Expiring Laws; to continue va- rious expiring Laws - - 103. U.K.
Ecclesiastical Patronage; to faci- litate transfers of Ecclesiastical Patronage in certain cases - 39. E.	Exportation of Salmon; to amend the Acts 26 & 27 Vict. c. 10. and 28 & 29 Vict. c. 121., re- lating to the export of unseason- able Salmon - - - 33. U.K.
Edinburgh, &c. Annuity Tax; to amend the Act 23 and 24 Vict. c. 50., "to abolish the Annaity "Tax in Edinburgh and Mont- "rose, and to make provision "in regard to the Stipends of "the Ministers in that City "and Burgh, and also to make "provision for the Patronage "of the Church of North "Leith;" and to make pro- vision for the abolition of the Annuity Tax within the Parish	Extradition; for amending the Law relating to the Extradition of Criminals - - - 52. U.K.
	Factories and Workshops; to amend and extend the Acts re- lating to Factories and Work- shops [Print Works and Bleaching and Dyeing Works; Fruit and Fish Preserves] - 62. U.K.

	Cap. Relating to		Cap. Relating to
Felony; to abolish Forfeitures for Treason and Felony, and to otherwise amend the Law relating thereto -	23. E. & I.	Tax, and to amend the Law relating to Inland Revenue -	4. U.K.
Fish, Preserves of. <i>See</i> Factories and Workshops.		Income Tax. <i>See also</i> Inland Revenue.	
Foreign Enlistment; to regulate the conduct of Her Majesty's subjects during the existence of hostilities between foreign states with which Her Majesty is at peace -	90. U.K.	India; to make better provision for making laws and regulations for certain parts of India, and for certain other purposes relating thereto -	3. C.
Foreign States (Criminals). <i>See</i> Extradition.		—to render valid certain Contracts informally executed in India -	59. C.
Forfeitures, &c. <i>See</i> Felony.		Inland Revenue; to make provision for the assessment of Income Tax, and to amend the Law relating to the Inland Revenue -	4. U.K.
Forgery; to further amend the Law relating to indictable offences by Forgery [Stock Certificates, &c.] -	58. U.K.	—for the Repeal of certain Enactments relating to the Inland Revenue [Stamp Duties] -	99. U.K.
— <i>See also</i> Statute Law Revision.		—to grant certain Duties of Customs and Inland Revenue, and to repeal and alter other Duties of Customs and Inland Revenue. [Sugar, and Sugar for Brewing; Confectionary; Perfumed Spirits; Income Tax; Licenses to Hawkers, and to Makers of Soap, Paper, Playing-cards, and Stills; Plate Licenses; Auctioneers Licenses; Grain for Animals; Husbandry Horses; Stamp Duties on Newspapers and on certain Policies of Insurance.] -	32. U.K.
Fortifications. <i>See</i> Canada Defences.		—to grant a duty of Excise on Licenses to use Guns -	57. U.K.
Fruit Preserves. <i>See</i> Factories and Workshops.		Insurance Companies. <i>See</i> Life Assurance Companies.	
Gas Works, &c.; to facilitate in certain cases the obtaining of powers for the construction of Gas and Water Works and for the supply of Gas and Water -	70. U.K.	Insurance Policies. <i>See</i> Inland Revenue.	
Glebe Loans; to amend the Act 1 & 2 W. 4. c. 33. in part, and to afford facilities for obtaining Loans for the erection, enlargement; and improvement of Glebe Houses, and for the acquirement of lands for Glebes, in Ireland -	112. I.	International Exhibitions. <i>See</i> Inventions, &c.	
Grain for Animals. <i>See</i> Inland Revenue.		Inventions, Protection of; for the Protection of Inventions exhibited at International Exhibitions in the United Kingdom -	27. U.K.
Greenwich Hospital; to amend the Law relating to the repayment to the Consolidated Fund of money expended for the benefit of Greenwich Hospital -	100. U.K.	Inverness and Elgin Boundaries; to define the boundary between the counties of Inverness and Elgin or Moray, in the district of Strathspey; and for other purposes -	16. S.
Gun Licenses; to grant a Duty of Excise on Licenses to use Guns -	57. U.K.	Investment of Trust Funds. <i>See</i> Trust Funds.	
Guardians, Boards of. <i>See</i> Dissolved Boards, &c.		Ireland, Acts relating exclusively to. <i>See</i> —Cattle Disease. Census. Clerk of Petty Sessions. Common Law Courts. Constabulary. Curragh of Kildare.	
Hawkers Licenses, &c. <i>See</i> Inland Revenue. Pedlars.			
Horses, Duty on. <i>See</i> Inland Revenue.			
Income Tax; to make provision for the assessment of Income			

Cap. Relating to		Cap. Relating to
Dublin. Glebe Loans. Irish Land Act. Londonderry. Marriages. Peace Preservation. Poisons. Police. Real Actions Abolition. Sanitary Act, 1866. Sligo and Cashel. Irish Constabulary. <i>See</i> Police.		Larceny; to amend the Law relating to Advertisements respecting Stolen Goods - 65. E. & I.
Irish Land Act; to amend the Law relating to the Occupation and Ownership of Land in Ireland - 46. I.		Leases; to declare the Stamp Duty chargeable on certain Leases - 44. U.K.
Isle of Man. <i>See</i> Customs (Isle of Man). Notices. Survey Telegraphs.		— <i>See also</i> Stamp Duties.
Joint Stock Companies; to facilitate compromises and arrangements between creditors and shareholders of Joint Stock and other Companies in Liquidation - 104. U.K.		Leith. <i>See</i> Edinburgh, &c.
Judges Jurisdiction; to extend the Jurisdiction of the Judges of the Superior Courts of Common Law at Westminster - 6. E.		License Duties. <i>See</i> Inland Revenue.
Juries; to amend the Laws relating to the qualifications, summoning, attendance, and remuneration of Special and Common Juries - 77. E.		Life Assurance Companies; to amend the Law relating to Life Assurance Companies - 61. U.K.
Justice, Administration of. <i>See</i> Absconding Debtors. Arrestment of Wages. Attachment of Wages. Attorneys and Solicitors. Clerk of Petty Sessions. Common Law Criminals. Evidence. Extradition. Felony. Forgery. Judges Jurisdiction. Juries. Larceny. Liverpool Admiralty. Magistrates. Naturalization. Notices, &c. Peace Preservation. Poisons. Property of Married Women. Protection of Inventions. Real Actions Abolition. Sheriffs. Stolen Goods. Treason.		Limited Owners Residences; to enable the owners of Settled Estates in England and Ireland to charge such estates, within certain limits, with the expense of building mansions as residences for themselves - 56. E. & I.
Justice of Peace. <i>See</i> Magistrates, &c.		Liquidation. <i>See</i> Joint Stock Companies.
Kildare Curragh; to confirm the award under the Curragh of Kildare Act, 1868 (31 & 32 Vict. c. 60.), and for other purposes relating thereto - 74. I.		Liverpool Admiralty District Registrar; for establishing a District Registrar of the High Court of Admiralty in England at Liverpool - 45. E.
Landlord and Tenant; to amend the Law relating to the Occupation and Ownership of Land in Ireland - 46. I.		Loans. <i>See</i> Canada Defences. Glebe Loans. Metropolitan Board of Works. New Zealand.
		London Brokers Relief; to relieve the Brokers of the City of London from the supervision of the Court of Mayor and Aldermen of the said city - 60. E.
		Londonderry, to make better provision for the Police Force in the City of, and to amend the Acts relating to the Royal Irish Constabulary Force - 83. I.
		Magistrates, &c.; to enable the senior Magistrate of populous Places in Scotland to act ex officio as a Justice of the Peace and Commissioner of Supply for the County in which the said populous Place is situated - 37. S.
		— to amend the Laws for the Election of the Magistrates and Councillors of Royal and Parliamentary Burghs in Scotland - 92. S.
		Man, Isle of. <i>See</i> Isle of Man.
		Mansion-houses. <i>See</i> Settled Estates.
		Marine Mutiny; for the regulation of Her Majesty's Royal Marine Forces while on shore - 8. U.K.

	Cap. Relating to		Cap. Relating to
Marriages; to provide for the administration of the Law relating to Matrimonial Causes and Matters, and to amend the Law relating to Marriages in Ireland - - -	110. I.	Enactments relating to the National Debt - - -	71. U.K.
Married Women's Property; to amend the Law relating to the Property of Married Women -	93. E. & I.	— for repealing certain enactments that have ceased to be in force - - -	69. U.K.
Matrimonial Causes. <i>See</i> Marriages.		Naturalization; to amend the Law relating to the legal condition of Aliens and British Subjects - - -	14. U.K.
Medical Officers Superannuation; to provide for Superannuation Allowances to Medical Officers of Unions, Districts, and Parishes in England and Wales - - -	94. E.	— to amend the Law relating to the taking of Oaths of Allegiance on Naturalization [ <i>Amending preceding Act</i> ] -	102. U.K.
Meeting of Parliament; to amend the Acts 37 Geo. 3. c. 127. and 39 & 40 Geo. 3. c. 14. -	81. U.K.	Naval Stores; to authorise the carriage of Naval and Military Stores in Passenger Ships -	95. U.K.
Metropolitan Board of Works; for making further provision respecting the borrowing of Money by the Metropolitan Board of Works - -	24. E.	Neutrality. <i>See</i> Foreign Enlistment.	
Metropolitan Poor; to provide for the equal distribution over the Metropolis of a further portion of the charge for the relief of the Poor - -	18. E.	Newspapers. <i>See</i> Advertisements. Inland Revenue. Post Office.	
Military Stores; to authorise the carriage of Naval and Military Stores in Passenger Ships -	95. U.K.	New Zealand; for authorising a guarantee of a loan to be raised by the Government of New Zealand for the construction of roads, bridges, and communications in that country, and for the introduction of settlers into that country - -	40. C.
Militia; to amend the Acts relating to the Militia of the United Kingdom - -	68. U.K.	Norfolk Boundary; to declare the Hundred in which a piece of land in the County of Norfolk is situate, and to provide for the Assessment of the said piece of land to the County Rate - - -	85. E.
Mint, The; to consolidate and amend the Law relating to the Coinage and Her Majesty's Mint - - -	10. U.K.	North Leith. <i>See</i> Edinburgh, &c.	
Montrose. <i>See</i> Annuity Tax.		Norwich; to disfranchise certain Voters of the city of Norwich -	25. E.
Moray. <i>See</i> Inverness, &c.		Notices (Isle of Man); to repeal the Act 7 Will. 4. & 1 Vict. c. 45. "to alter the mode of giving Notices for the holding of Vestries, of making Proclamation in cases of Outlawry, and of giving Notices on Sundays in respect to various matters," so far as such Act relates to the Isle of Man - - -	51. U.K.
Mortgage Debentures; to amend the Mortgage Debenture Act, 1865 (28 & 29 Vict. c. 78.) -	20. E.	Oaths of Allegiance. <i>See</i> Naturalization.	
Municipal Elections; to amend the Laws for the Election of the Magistrates and Councillors of Royal and Parliamentary Burghs in Scotland - -	92. S.	Ordnance Survey. <i>See</i> Survey, &c.	
Mutiny; for punishing Mutiny and Desertion, and for the better payment of the Army and their Quarters - -	7. U.K.	Ownership and Occupation of Land. <i>See</i> Landlord and Tenant.	
— for the regulation of Her Majesty's Royal Marine Forces while on shore - -	8. U.K.	Owners of Settled Estates. <i>See</i> Limited Owners Residences.	
National Debt; for consolidating, with Amendments, certain			

	Cap. Relating to		Cap. Relating to
Paper-Makers Licenses. <i>See</i> Inland Revenue.		Poisons, to regulate the Sale of, in Ireland - - -	26. I.
Parliament, Meeting of; to amend the Acts 37 Geo. 3. c. 127. and 39 & 40 Geo. 3. c. 14.	81. U.K.	Police; to make better provision for the Police Force in the City of Londonderry, and to amend the Acts relating to the Royal Irish Constabulary Force -	83. I.
Parliamentary Burghs. <i>See</i> Municipal Elections.		Policies of Insurance. <i>See</i> Inland Revenue.	
Parliamentary Franchise; to enable the officers employed in the Collector-General of Rates office in the city of Dublin to vote at Parliamentary Elections for that city - - -	11. I.	Poor—Poor Relief; to make provision for the proceedings of Boards of Management and Boards of Guardians upon the dissolution of Districts and Unions or the annexation of Parishes to Unions - - -	2. E.
— <i>See also</i> Bridgwater and Beverley. Dublin. Norwich. Sligo and Cashel.		— to provide for the equal distribution over the Metropolis of a further portion of the charge for the relief of the poor - - -	18. E.
Passengers Act Amendment; to authorize the carriage of Naval and Military Stores in Passenger Ships - - -	95. U.K.	— for removing doubts respecting the payment of Expenses incurred in the Conveyance of Paupers in certain cases not expressly provided for by Law - - -	48. E.
Patronage (Ecclesiastical), to facilitate the transfer of, in certain cases - - -	39. E.	— <i>See also</i> Medical Officers Superannuation.	
Paupers Conveyance (Expenses); for removing doubts respecting the payment of Expenses incurred in the Conveyance of Paupers in certain cases not expressly provided for by Law	48. E.	Population of United Kingdom. <i>See</i> Census.	
Peace Preservation; to amend the Peace Preservation (Ireland) Act, 1856 (19 & 20 Vict. c. 36.), and for other purposes relating to the Preservation of Peace in Ireland - - -	9. I.	Post Office; for further regulation of Duties of Postage, and for other purposes relating to the Post Office [Newspapers, &c.] - - -	79. U.K.
Peddars; for granting Certificates to - - -	72. U.K.	Preserves of Fruits, &c. <i>See</i> Factories and Workshops.	
Pensions Commutation; for amending the Sixth Section of The Pensions Commutation Act, 1869 (32 & 33 Vict. c. 32.) - - -	101. U.K.	Priest of Church of England. <i>See</i> Clerical Disabilities.	
Perfumed Spirits. <i>See</i> Customs and Inland Revenue.		Print Works. <i>See</i> Factories and Workshops.	
Periodical Payments. <i>See</i> Rents, &c.		Property of Married Women; to amend the Law relating to the Property of Married Women -	93. E. & I.
Petty Customs Abolition; to empower Magistrates and Town Councils of Burghs in Scotland to abolish petty customs and to levy a rate in lieu thereof -	42. S.	Protection of Inventions; for the protection of Inventions exhibited at International Exhibitions in the United Kingdom	27. U.K.
Petty Sessions Clerk; to amend The Petty Sessions Clerk (Ireland) Act, 1858 (21 & 22 Vict. c. 100.) - - -	64. I.	Provisional Orders Bills; to empower Committees on Bills confirming Provisional Orders to award Costs and examine Witnesses on Oath - - -	1. U.K.
Plate Licenses. <i>See</i> Inland Revenue.		Public Schools; to amend the Public Schools Act, 1868 (31 & 32 Vict. c. 118.) -	84. E.
Playing-cards Licenses. <i>See</i> Inland Revenue.		Public Stocks; for extending to Ireland, and amending, the	

	Cap. Relating to		Cap. Relating to
Dividends and Stock Act, 1869 (32 & 33 Vict. c. 104.)	47. U.K.	Sanitary Act, 1866, &c.; to amend the Sanitary Act, 1866 (29 & 30 Vict. c. 90.), so far as relates to the City of Dublin	106. I.
[Both Acts repealed by 33 & 34 Vict. c. 69., and other Provisions made by 33 & 34 Vict. c. 71.—See National Debt.]		Schools; to amend the Public Schools Act, 1868 (31 & 32 Vict. c. 118.)	84. E.
Queen Anne's Bounty; to enable the Governors of, to provide Superannuation Allowances for their Officers	89. E.	— to provide for public Elementary Education in England and Wales	75. E.
Railways; to amend the Railway Companies Powers Act, 1864 (27 & 28 Vict. c. 120.), and the Railway Construction Facilities Act, 1864 (27 & 28 Vict. c. 121.)	19. U.K.	Scotland, Acts relating exclusively, to. See Annuity Tax. Arrestment of Wages. Census. Edinburgh. Inverness and Elgin. Magistrates, &c. Municipal Elections. Petty Customs Abolition. Sheriffs.	
Real Actions Abolition; to abolish certain Real Actions in the Superior Courts of Common Law in Ireland, and further to amend the Procedure in the said Courts; and for other Purposes	109. I.	Service in the Army. See Army Sessions. See Petty Sessions.	
Refined Sugar Duties. See Customs, &c.		Settled Estates, to enable the owners of, to charge such Estates, within certain limits, with the expense of building Mansions as residences for themselves	56. E. & I.
Registrar of the Admiralty. See Liverpool Admiralty District Registrar.		Sewage Utilization; to amend certain Provisions in the Sanitary and Sewage Utilization Acts	53. E.
Remuneration of Attorneys, &c. See Attorneys and Solicitors.		Sheriffs; to amend and extend the Act 16 & 17 Vict. c. 92., to make further provision for uniting counties in Scotland in so far as regards the jurisdiction of the Sheriff; and also to make certain provisions regarding the duties of Sheriffs and Sheriffs Substitute in Scotland	86. E.
Rents, &c.; for the better Apportionment of Rents and other periodical payments	35. E. & I.	Shipping Dues Exemption; to amend The Shipping Dues Exemption Act, 1867 (30 & 31 Vict. c. 15.)	50. U.K.
Residences. See Limited Owners Residences.		Siam and Straits Settlements; to vest jurisdiction in matters arising within the Dominions of the Kings of Siam in the Supreme Court of the Straits Settlements	55. C.
Roads, &c. in New Zealand. See New Zealand.		Sligo and Cashel, to disfranchise the Boroughs of	38. I.
Royal Burghs. See Municipal Elections.		Soap-makers Licenses. See Inland Revenue.	
Royal Irish Constabulary. See Police.		Solicitors; to amend the Law relating to the Remuneration of Attorneys and Solicitors	28. E. & I.
Royal Marines. See Marine Mutiny.		Special Juries; to amend the Laws relating to the qualifications, summoning, attendance, and remuneration of Special and Common Juries	77. E.
Royal Mint. See Coinage.			
Sale of Beer. See Beerhouses.			
Sale of Poisons, to regulate the Sale of Poisons in Ireland	26. I.		
Salmon; to amend the Acts 26 & 27 Vict. c. 10. and 28 & 29 Vict. c. 121., relating to the Export of unseasonable Salmon	33. U.K.		
Sanitary Act, 1866, &c.; to amend certain provisions in the Sanitary and Sewage Utilization Acts (29 & 30 Vict. c. 90. and 30 & 31 Vict. c. 113.)	53. E.		



Cap. Relating to		Cap. Relating to	
Stamp Duties; for granting certain Stamp Duties in lieu of Duties of the same kind now payable under various Acts, and consolidating and amending Provisions relating thereto — for consolidating and amending the Law relating to the Management of Stamp Duties — for the repeal of certain Enactments relating to the Inland Revenue [Stamp Duties] — to declare the Stamp Duty chargeable on certain Leases - — See also Inland Revenue.	97. U.K.	Telegraphs; to extend the Telegraph Acts of 1863, 1869 (31 & 32 Vict. c. 110. and 32 & 33 Vict. c. 73.), to the Channel Islands and the Isle of Man - Tenants (Ireland). See Landlord and Tenant.	88. U.K.
Statute Law Revision; for further promoting the revision of the Statute Law by repealing certain enactments that have ceased to be in force or are consolidated by certain Acts of the present session. [National Debt; Forgery]	98. U.K.	Tramways; to facilitate the construction and to regulate the working of Tramways -	78. E. & S.
Stills. See Inland Revenue.	99. U.K.	Transfer of Patronage; to facilitate transfer of Ecclesiastical Patronage in certain cases -	39. E.
Stocks, Public. See Public Stocks.	44. U.K.	Treason; to abolish Forfeitures for Treason and Felony, and to otherwise amend the Law relating thereto -	23. E. & I.
Stolen Goods, to amend the Law relating to Advertisements respecting -	69. U.K.	Truck Commission; for appointing a Commission to inquire into the alleged prevalence of the Truck System, and the disregard of the Acts of Parliament prohibiting such System, and for giving such Commission the powers necessary for conducting such Inquiry -	105. E. & S.
Straits Settlements; to vest jurisdiction in matters arising within the Dominions of the Kings of Siam in the Supreme Court of the Straits Settlements -	65. E. & I.	Trust Funds; to amend the Law as to the investment on real securities of Trust Funds held for public and charitable purposes -	34. U.K.
Street Tramways. See Tramways.	56. C.	Turnpike Trusts; to confirm a Provisional Order made under the Act 14 & 15 Viet. c. 38., to facilitate arrangements for the Relief of Turnpike Trusts -	22. E.
Sugar Duties; to alter certain Duties of Customs upon Refined Sugar in the Isle of Man See also Customs and Inland Revenue.	43. U.K.	— to continue certain Turnpike Acts in Great Britain, to repeal certain other Turnpike Acts, and to make further provisions concerning Turnpike Roads -	73. E. & S.
Sunday Notices. See Notices (Isle of Man).		Vestries (Isle of Man); to repeal the Act 7 Will. 4. & 1 Viet. c. 45. "to alter the mode of giving notices for the holding of Vestries, of making Proclamation in cases of Outlawry, and of giving Notices on Sundays in respect to various matters," so far as such Act relates to the Isle of Man -	51. U.K.
Superannuation; to enable the Governors of Queen Anne's Bounty to provide Superannuation Allowances for their Officers -	89. E.	Voters Disfranchisement. See Bridgwater and Beverley. Dublin. Norwich. Sligo and Cashel.	
— to provide for Superannuation Allowances to Medical Officers of Unions, Districts, and Parishes in England and Wales -	94. E.		
Surrender of Criminals. See Extradition.			
Survey of Great Britain, &c.; to amend the Law relating to the Surveys of Great Britain, Ireland, and the Isle of Man -	13. U.K.		

	Cap.	Relating to		Cap.	Relating to
Wages; to abolish Attachment of Wages - - -	30.	E.	powers for the construction of Gas and Water Works, and for the supply of Gas and Water -	70.	U.K.
— to limit Wages Arrestment in Scotland - - -	63.	S.	Wine and Beerhouses; to amend and continue The Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27.) - - -	29.	E.
— for appointing a Commission to inquire into the alleged prevalence of the Truck System, and the disregard of the Acts of Parliament prohibiting such system, and for giving such Commission the powers necessary for conducting such Inquiry - - -	105.	E. & S.	Witnesses. <i>See</i> Provisional Orders Bills.		
War Office; for making further provision relating to the Management of certain Departments of the War Office -	17.	U.K.	Women. <i>See</i> Factories and Workshops. Married Women.		
Waterworks, &c.; to facilitate in certain cases the obtaining of			Workmen's International Exhibition. <i>See</i> Protection of Inventions.		
			Workmen's Wages. <i>See</i> Wages.		
			Workshops; to amend and extend the Acts relating to Factories and Workshops - -	62.	U.K.

## TABLES

SHOWING

## THE EFFECT OF THE YEAR'S LEGISLATION.

TABLE A.—Acts of 33 &amp; 34 Vict. (in order of Chapter) showing their effect on former Acts.

TABLE B.—Acts of former Sessions (in chronological order) Repealed and Amended by Acts of 33 &amp; 34 Vict.

(A.)

Acts of 33 &amp; 34 Vict. (in order of Chapter) showing their effect on former Acts.

Ch.

1. *Provisional Orders Bills (Committees)*:  
 Applies 21 & 22 Vict. c. 78., Administration of Oaths.  
 Applies 28 & 29 Vict. c. 27., Award of Costs.
2. *Dissolved Boards of Management and Guardians*:  
 Applies 4 & 5 Will. 4. c. 76. and 30 & 31 Vict. c. 106., Poor Relief.  
 Applies 32 & 33 Vict. c. 63., Metropolitan Poor.
3. *East India (Laws and Regulations)*:  
 Repeals section 49 of 3 & 4 Will. 4. c. 85., Government of India.
4. *Income Tax Assessment and Inland Revenue Law Amendment*:  
 Applies existing Acts relating to Income Tax.  
 Applies 32 & 33 Vict. c. 67., Valuation (Metropolis).
5. *Consolidated Fund*.
6. *Judges Jurisdiction*.
7. *Mutiny*:  
 Applies 26 & 27 Vict. c. 57., Regimental Debts.  
 Repeals section 9, 10, of 30 & 31 Vict. c. 34., Army Enlistment.
8. *Marine Mutiny*.
9. *Peace Preservation (Ireland)*:  
 Amends, and repeals in part, 19 & 20 Vict. c. 36., Peace Preservation (Ireland).  
 Repeals section 14 of 11 & 12 Vict. c. 2., Crime and Outrage (Ireland).

- Applies 15 & 16 Geo. 3. c. 21. (Irish Parl.), Tumultuous Risings (Ireland).  
 Applies 1 & 2 Will. 4. c. 44., Tumultuous Risings (Ireland).  
 Applies 60 Geo. 3. and 1 Will. 4. c. 1., Illegal Military Training.  
 Applies 14 & 15 Vict. c. 90., Fines (Ireland).  
 Applies 14 & 15 Vict. c. 92., Summary Jurisdiction (Ireland).  
 Applies 14 & 15 Vict. c. 93., Petty Sessions (Ireland).  
 Applies 6 & 7 Will. 4. c. 116., Grand Jury Presentments (Ireland).  
 Applies 31 & 32 Vict. c. 75., Juries (Ireland).

Ch.

10. *Coinage*:  
 Applies 11 & 12 Vict. c. 43., } Summary  
 „ 27 & 28 Vict. c. 53., } Procedure.  
 „ 14 & 15 Vict. c. 93., Petty Sessions (Ireland).  
 Repeals Acts in Schedule. [*These Acts will be found in their Chronological Order in Table B.*]
11. *Dublin Collector General of Rates Franchise*:  
 Recites 31 & 32 Vict. c. 73., Revenue Officers Disabilities Removal.  
 Repeals section 24 of 12 & 13 Vict. c. 91. Collector of Rates (Dublin).
12. *Customs (Isle of Man)*:  
 Repeals in part 18 & 19 Vict. c. 97., Duties on Corn.

Table A.—Acts of 33 &amp; 34 Vict. (in order of Chapter), &amp;c.—continued.

- Ch.  
13. *Survey of Great Britain, &c.*:  
Applies 6 Geo. 4. c. 99., } Survey  
" 17 & 18 Vict. c. 17., } (Ireland).  
" 4 & 5 Vict. c. 30., Survey (Great  
Britain).  
Repeals 45 Geo. 3. c. 109., Survey (Ire-  
land).  
Repeals 19 & 20 Vict. c. 61., Survey (Great  
Britain).
14. *Naturalization*:  
Applies 31 & 32 Vict. c. 37., Documentary  
Evidence.  
Repeals, with a proviso, Acts in Schedule.  
[These Acts will be found in their Chrono-  
logical Order in Table B.]
15. *County Courts Buildings*:  
Applies 8 & 9 Vict. c. 18., Lands Clauses.  
Repeals sections 48, 50–55, of }  
9 & 10 Vict. c. 96., }  
Repeals sections 8, 9, of 29 & } County  
30 Vict. c. 14., } Courts.  
Repeals section 18 of 30 & 31  
Vict. c. 142., }
16. *Inverness County, &c., (Boundary)*:  
Amends 26 & 27 Vict. c. cxxiv., Elgin and  
Nairn Roads.  
Amends 25 & 26 Vict. c. 105., Highland  
Roads and Bridges.  
Amends 23 & 24 Vict. c. 79., Sheriff  
Courthouses (Scotland).  
Applies 20 & 21 Vict. c. 72., Police Assess-  
ments (Scotland).  
Applies 7 Will. 4. & 1 Vict. c. 41., Small  
Debts (Scotland).  
Applies 16 & 17 Vict. c. 80., } Sheriff  
" 30 & 31 Vict. c. 96., } Courts  
" 27 & 28 Vict. c. 53., } (Scotland).  
Proceedings (Scotland).
17. *War Office*:  
Amends 18 & 19 Vict. c. 117., Ordnance  
Board.  
Amends 26 & 27 Vict. c. 12., Secretary of  
State for War.
18. *Metropolitan Poor*:  
Amends 30 & 31 Vict. c. 6., Metropolitan  
Poor.
19. *Railways (Powers and Construction)*:  
Amends and repeals in part 27 & 28 Vict.  
c. 120., Railways (Powers).  
Amends and repeals in part 27 & 28 Vict.  
c. 121., Railways (Construction).  
Applies 33 & 34 Vict. c. 1., Provisional  
Orders Bills.  
Applies sections 4, 6–8, of 9 & 10 Vict.  
c. 57., Gauge of Railways.
- Ch.  
20. *Mortgage Debenture Act, 1865, Amendment*:  
Amends and repeals in part 28 & 29 Vict.  
c. 78., Mortgage Debentures.
21. *Beverley and Bridgewater Disfranchisement*.
22. *Turnpike Trusts Arrangements*:  
Confirms Provisional Order made under  
14 & 15 Vict. c. 38.
23. *Felony*:  
Repeals in part 30 Geo. 3. c. 48. and  
54 Geo. 3. c. 146., as to drawing and  
quartering, &c. in cases of High Treason.
24. *Metropolitan Board of Works (Loan)*:  
Amends 32 & 33 Vict. c. 102., Metropolitan  
Board of Works.
25. *Norwich Voters Disfranchisement*.
26. *Sale of Poisons (Ireland)*:  
Applies 14 & 15 Vict. c. 90., Fines (Ireland).  
" 14 & 15 Vict. c. 93., Petty Sessions  
(Ireland).  
Extends 23 & 24 Vict. c. 84., Adulteration  
of Articles of Food, &c.  
Saves 14 & 15 Vict. c. 13., Sale of Arsenic.
27. *Protection of Inventions*:  
Rights under the Patent Law Amendment  
Act, 1852, and under The Designs Act,  
1850, protected.
28. *Attorneys and Solicitors Remuneration*:  
Amends 6 & 7 Vict. c. 73., Attorneys  
Costs.
29. *Wine and Beerhouse Act (1869) Amendment*:  
Amends and continues 32 & 33 Vict. c. 27.  
Applies 9 Geo. 4. c. 61., as to Justices  
Licences.  
Amends 26 & 27 Vict. c. 33., Beer Re-  
tailers Licences.  
Extends 18 & 19 Vict. c. 118., as to Entry  
by Constables.  
Repeals section 6 of 5 Geo. 4. c. 54., sec-  
tion 2 of 6 Geo. 4. c. 81., and section 6  
of 13 and 14 Vict. c. 67., so far as relates  
to Brewers Retail Licences.
30. *Wages Attachment Abolition*.
31. *Consolidated Fund (9,000,000l.)*
32. *Customs and Inland Revenues*:  
Repeals certain duties, and grants others,  
as specified.  
Removes doubts as to duty on Husbandry  
Horses (32 & 33 Vict. c. 14).  
Repeals stamp duties on Newspapers, and  
reduces stamp duty under 28 & 29 Vict.  
c. 96. s. 10. on certain Policies of In-  
surance.  
Amends section 43 of 25 & 26 Vict. c. 22,  
and repeals sections 6 and 7 of 32 & 33  
Vict. c. 14., as to Income Tax.

Table A.—Acts of 33 & 34 Vict. (in order of Chapter), &c.—*continued*.

- |  |  |
|--|--|
| <p>Ch.<br/>33. <i>Salmon Acts Amendment</i>:<br/>Amends section 3 of 26 &amp; 27 Vict. c. 10.,<br/>Salmon Acts Amendment.<br/>Amends section 65 of 28 &amp; 29 Vict. c. 121.,<br/>Salmon Fishery.</p> <p>34. <i>Charitable Funds Investment</i>:<br/>Amends 9 Geo. 2. c. 36., Mortmain Act.</p> <p>35. <i>Apportionment of Rents, &amp;c.</i></p> <p>36. <i>Cattle Disease (Ireland) Act, 1866, Amendment</i>:<br/>Amends 29 &amp; 30 Vict. c. 4.</p> <p>37. <i>Magistrates in Populous Places (Scotland)</i>:<br/>Amends 25 &amp; 26 Vict. c. 101., Police of<br/>Towns (Scotland).</p> <p>38. <i>Sligo and Cachel Disfranchisement</i>.</p> <p>39. <i>Ecclesiastical Patronage Transfer</i>:<br/>Explains Ecclesiastical Commissioners<br/>Acts, 3 &amp; 4 Vict. c. 113. s. 73., 4 &amp; 5<br/>Vict. c. 39. s. 22., and 31 &amp; 32 Vict.<br/>c. 114. s. 12.</p> <p>40. <i>New Zealand (Roads, &amp;c.) Loan</i>.</p> <p>41. <i>Exchequer Bonds</i>.</p> <p>42. <i>Petty Customs (Scotland) Abolition</i>.</p> <p>43. <i>Customs Refined Sugar Duties (Isle of Man)</i>:<br/>Repeals in part 29 &amp; 30 Vict. c. 23.,<br/>Customs (Isle of Man).</p> <p>44. <i>Stamp Duty on Leases</i>:<br/>Construction of section 16 of 17 &amp; 18 Vict.<br/>c. 83. as to additional duty on certain<br/>Leases.</p> <p>45. <i>Liverpool Admiralty District Registrar</i>.</p> <p>46. <i>Landlord and Tenant (Ireland)</i>.</p> <p>47. <i>Dividends and Stock</i>:<br/>Amends, and extends to Ireland, 32 &amp; 33<br/>Vict. c. 104. [<i>Both Acts repealed by</i><br/>33 &amp; 34 Vict. c. 69., (<i>Statute Law Re-</i><br/><i>vision</i>),—<i>and other Provisions made by</i><br/>33 &amp; 34 Vict. c. 71., <i>National Debt</i>.]</p> <p>48. <i>Paupers Conveyance (Expenses)</i>:<br/>Applies 4 &amp; 5 W. 4. c. 76., Poor Relief.</p> <p>49. <i>Evidence Amendment</i>:<br/>Amends and explains 32 &amp; 33 Vict. c. 68.</p> <p>50. <i>Shipping Dues Exemption Act (1867) Amendment</i>:<br/>Amends 30 &amp; 31 Vict. c. 15., as to Agree-<br/>ments for Compensation.<br/>Repeals 32 &amp; 33 Vict. c. 52., Shipping Dues<br/>Exemption Act, 1869.</p> <p>51. <i>Notice Act (Isle of Man) Repeal</i>:<br/>Repeals (so far as respects the Isle of<br/>Man) 7 W. 4 &amp; 1 Vict. c. 45.</p> | <p>Ch.<br/>52. <i>Extradition</i>:<br/>Repeals 6 &amp; 7 Vict. c. 75., 76., and 8 &amp; 9<br/>Vict. c. 120., Apprehension of<br/>Offenders (France and United<br/>States).<br/>" 26 &amp; 26 Vict. c. 70., Mutual Sur-<br/>render of Criminals (Denmark).<br/>" 29 &amp; 30 Vict. c. 121., Extradition<br/>Treaties.<br/>Applies 19 &amp; 20 Vict. c. 113., as to Foreign<br/>State obtaining Evidence in United<br/>Kingdom.</p> <p>53. <i>Sanitary Act (1866) Amendment</i>:<br/>Amends 29 &amp; 30 Vict. c. 90., Sanitary Act,<br/>1866.<br/>Amends 30 &amp; 31 Vict. c. 113., Sewage<br/>Utilization.<br/>Extends 58 Geo. 3. c. 69., Parish Vestries.</p> <p>54. <i>Dublin City Voters Disfranchisement</i>:<br/>Recites 32 &amp; 33 Vict. c. 65., Dublin Free-<br/>men's Commission.</p> <p>55. <i>Siam and Straits Settlement Jurisdiction</i>:<br/>Explains 20 &amp; 21 Vict. c. 75., Jurisdiction<br/>in Siam.</p> <p>56. <i>Limited Owners Residences</i>:<br/>Applies 27 &amp; 28 Vict. c. 114., Improve-<br/>ment of Land.</p> <p>57. <i>Gun Licences</i>:<br/>Licence void if the holder be convicted of<br/>any offence under 1 &amp; 2 Vict. c. 32.<br/>s. 30. or 2 &amp; 3 Will. 4. c. 68.</p> <p>58. <i>Forgery</i>:<br/>Amends 24 &amp; 25 Vict. c. 98. (Forgery<br/>Consolidation), and extends it to Scot-<br/>land.</p> <p>59. <i>East India Contracts</i>:<br/>Amends 22 &amp; 23 Vict. c. 41. (Government<br/>of India) as to execution of certain Con-<br/>tracts.</p> <p>60. <i>London Brokers Relief</i>:<br/>Amends 6 Anne c. 68. and 57 Geo. 3. c. 1x.<br/>as to Brokers of the City of London.</p> <p>61. <i>Life Assurance Companies</i>:<br/>Applies and amends Companies Acts, 1845<br/>and 1862 (8 &amp; 9 Vict. c. 16. and 25 &amp; 26<br/>Vict. c. 89.)</p> <p>62. <i>Factories and Workshops</i>:<br/>Repeals 8 &amp; 9 Vict. c. 29., }<br/>" 10 &amp; 11 Vict. c. 70., } Printworks.<br/>" 23 &amp; 24 Vict. c. 78., }<br/>" 25 &amp; 26 Vict. c. 8., } Bleaching<br/>" 26 &amp; 27 Vict. c. 38., } and Dyeing<br/>" 27 &amp; 28 Vict. c. 98., } Works.<br/>Repeals in part and amends 30 &amp; 31 Vict.<br/>c. 103., Factory Acts Extension.<br/>Amends 30 &amp; 31 Vict. c. 146., Workshops.</p> |
|--|--|

Table A.—Acts of 33 & 34 Vict. (in order of Chapter), &c.—*continued*.

- Ch.  
63. *Wages Arrestment Limitation (Scotland)*:  
Amends 7 W. 4. and 1 Vict. c. 41., Small Debts (Scotland).
64. *Petty Sessions Clerk (Ireland) Act* (1858)  
*Amendment*:  
Amends 21 & 22 Vict. c. 100., Petty Sessions Clerk (Ireland).
65. *Larceny (Advertisements)*:  
Amends section 102 of 24 & 25 Vict. c. 96., Larceny Consolidation.
66. *British Columbia Government*:  
Amends 21 & 22 Vict. c. 99. and 29 & 30 Vict. c. 67., British Columbia Government.
67. *Army Enlistment*:  
Amends and extends 30 & 31 Vict. c. 110., Reserve Force.  
Amends and extends 30 & 31 Vict. c. 111., Militia Reserve.  
Applies 10 & 11 Vict. c. 37., Army Service Limitation.  
Applies 30 & 31 Vict. c. 34., Army Enlistment.
68. *Militia Acts Amendment*:  
Amends former Acts so far as relates to the drawing out, embodiment, &c., of the Militia in cases of emergency.
69. *Statute Law Revision*:  
Repeals, with a proviso, the Enactments relating to the National Debt and to Forgery, as described in the Schedules. [*These Acts will be found in their chronological order in Table B.*]
70. *Gas and Water Facilities*:  
Applies Lands Clauses Acts, 1845 and 1860.  
Applies Gasworks Clauses Act, 1847.  
Applies Waterworks Clauses Acts, 1847 and 1863.  
Applies 7 W. 4. and 1 Vict. c. 83., Custody of Documents by Clerks of the Peace.
71. *National Debt*:  
Consolidates, with amendments, certain enactments relating to the National Debt. [*Former Enactments repealed by Cap. 69.*]
72. *Pedlars Certificates*:  
Applies 11 & 12 Vict. c. 43., } Summary  
" 27 & 28 Vict. c. 53., } Procedure.  
" 14 & 15 Vict. c. 93., Petty Sessions (Ireland).
73. *Annual Turnpike Acts Continuance*:  
Repeals and continues Acts as in Schedule. Amends 31 & 32 Vict. c. 99.
74. *Curragh of Kildare*:  
Award under 31 & 32 Vict. c. 60. confirmed.
- Ch.  
75. *Elementary Education*:  
Applies the following Acts in whole or in part:—Lands Clauses, 1845; Commissioners Clauses, 1847; School Sites, 1841 to 1851; Charitable Trusts, 1853 to 1869; Documentary Evidence, 1868; Endowed Schools, 1869; Industrial Schools, 1866; Local Management, 1855 and 1862; Metropolitan Board of Works (Loan), 1869; Summary Procedure, 1843; Sturges Bourne's Act (58 Geo. 3. c. 69.)
76. *Absconding Debtors*:  
Extends provisions of Bankruptcy Act, 1869 (32 & 33 Vict. 71.)
77. *Juries*:  
Amends the County Juries Act, 1825 (6 Geo. 4. c. 50.)
78. *Tramways*:  
Applies Lands Clauses Act, 1845.  
" Commissioners Clauses Act, 1847.  
" Metropolis Board of Works (Loans), 1869.  
" 7 W. 4. & 1 Vict. c. 83., Custody of Documents by Clerks of Peace.  
" 11 & 12 Vict. c. 43., Summary Procedure.
79. *Post Office*:  
Repeals in part 6 & 7 W. 4. c. 76., Stamp Duties on Newspapers, &c.  
Repeals in part 3 & 4 Vict. c. 96., Postage Duties on Newspapers, &c.  
Repeals in part 16 & 17 Vict. c. 63., Stamp Duties on Newspapers, &c.  
Repeals 18 & 19 Vict. c. 27., Stamp Duties on Newspapers, &c.  
Repeals 11 & 12 Vict. c. 117., Newspapers (Channel Islands).  
Applies 7 W. 4. and 1 Vict. c. 36., Offences against the Post Office.  
Applies 31 & 32 Vict. c. 37., Documentary Evidence.
80. *Census (Ireland)*:  
Applies Petty Sessions (Ireland) Acts, 1851 and 1858.
81. *Meeting of Parliament*:  
Amends 37 Geo. 3. c. 127., } Meeting of  
" 39 & 40 Geo. 3. c. 14., } Parliament.
82. *Canada Defences Loan*.
83. *Constabulary Force (Ireland)*:  
Amends 28 & 29 Vict. c. 70., Constabulary (Ireland).  
Amends 39 & 30 Vict. c. 103., Constabulary (Ireland).

Table A.—Acts of 33 & 34 Vict. (in order of Chapter), &c.—*continued*.

Oh.

84. *Public Schools*:

Amends 31 &amp; 32 Vict. c. 118., Public Schools.

85. *Norfolk Boundary*:

Applies 15 &amp; 16 Vict. c. 81., County Rates Assessment, &amp;c.

86. *Sheriffs (Scotland) Act (1853) Amendment*:

Amends and extends 16 &amp; 17 Vict. c. 92., Sheriffs, Scotland.

Repeals in part 1 &amp; 2 Vict. c. 119., Sheriffs, Scotland.

87. *Annuity Tax Abolition (Edinburgh and Montrose) Act (1860) Amendment*:

Amends and repeals in part 23 &amp; 24 Vict. c. 50., Annuity Tax, &amp;c.

Amends and repeals in part 30 &amp; 31 Vict. c. 107., Annuity Tax, &amp;c.

Amends 1 &amp; 2 Vict. c. 55., Leith Dock Commissioners.

Applies Commissioners Clauses Act, 1847.

88. *Telegraph Acts Extension*:

Amends and extends 31 &amp; 32 Vict. c. 110., Telegraphs.

Amends and extends 32 &amp; 33 Vict. c. 73., Telegraphs.

89. *Queen Anne's Bounty*.90. *Foreign Enlistment*:

Repeals (with savings) 59 Geo. 3. c. 69., Foreign Enlistment.

91. *Clerical Disabilities*:

Amends 41 Geo. 3. c. 63., Seats in House of Commons by Persons in Holy Orders.

Amends section 28 of 5 &amp; 6 W. 4. c. 76., Municipal Corporations.

Amends 3 &amp; 4 Vict. c. 86., Church Discipline.

92. *Municipal Elections (Scotland)*:

Amends 3 & 4 W. 4. cc. 76., 77.,	{	Municipal Elections and Registration (Scotland.)
" 19 & 20 Vict. c. 58.,		
" 31 & 32 Vict. c. 48.,		
" 31 & 32 Vict. c. 108.,		

93. *Married Women's Property*:

Amends 10 Geo. 4. c. 24. as to Deposits in Savings Bank by a married Woman.

94. *Medical Officers Superannuation*:

Applies 27 &amp; 28 Vict. c. 42., Superannuation to Officers of Unions.

95. *Passengers Act Amendment*:

Amends section 29 of 18 &amp; 19 Vict. c. 119.

96. *Consolidated Fund (Appropriation)*.97. *Stamp Duties*:

Grants Duties (in lieu of former Duties), as in Schedule.

Oh.

Restricts the Exemption from Stamp Duty conferred by 6 &amp; 7 W. 4. c. 32. in favour of Building Societies.

Applies and amends 30 &amp; 31 Vict. c. 23. as to Sea Insurance Policies.

98. *Stamp Duties Management*:99. *Inland Revenue [Stamps] Acts Repeal*:

Repeals (with a proviso) enactments as in Schedule.

100. *Greenwich Hospital*:

Repeals section 51. of Greenwich Hospital Act, 1865, 28 &amp; 29 Vict. c. 89.

101. *Pensions Commutation Act (1869) Amendment*:

Amends section 6 of 32 &amp; 33 Vict. c. 32.

102. *Naturalization*:

Amends 33 &amp; 34 Vict. c. 14. as to the taking of Oaths of Allegiance.

103. *Expiring Laws Continuance*:

Continues the following Acts (and Acts amending the same), as in Schedule:—

5 &amp; 6 Will. 4. c. 27., Linen, &amp;c. Manufactures (Ireland).

2 &amp; 3 Vict. c. 74., Societies, unlawful (Ireland).

3 &amp; 4 Vict. c. 89., Poor Rates (Stock in Trade).

4 &amp; 5 Vict. c. 30., Survey of Great Britain.

4 &amp; 5 Vict. c. 59., Application of Highway Rates.

5 &amp; 6 Vict. c. 123., Lunatic Asylums (Ireland).

10 &amp; 11 Vict. c. 32., Landed Property Improvement (Ireland).

10 &amp; 11 Vict. c. 90., Poor Laws (Ireland).

10 &amp; 11 Vict. c. 98., Ecclesiastical Jurisdiction.

11 &amp; 12 Vict. c. 32., County Cess (Ireland).

11 &amp; 12 Vict. c. 107., Sheep and Cattle Diseases.

14 &amp; 15 Vict. c. 104., Episcopal, &amp;c. Estates.

17 &amp; 18 Vict. c. 102., Corrupt Practices Prevention.

17 &amp; 18 Vict. c. 117., Incumbered Estates (West Indies).

19 &amp; 20 Vict. c. 36., Preservation of the Peace (Ireland).

23 &amp; 24 Vict. c. 19., Dwellings for Labouring Classes (Ireland).

24 &amp; 25 Vict. c. 109., Salmon Fishery (England).

25 &amp; 26 Vict. c. 97., Salmon Fisheries (Scotland).

26 &amp; 27 Vict. c. 105., Promissory Notes.

27 &amp; 28 Vict. c. 20., Promissory Notes, &amp;c. (Ireland).

27 &amp; 28 Vict. c. 9., Malt for Animals.

27 &amp; 28 Vict. c. 92., Public Schools.

28 &amp; 29 Vict. c. 46., Militia Ballots Suspension.

28 &amp; 29 Vict. c. 68., Malt Duty.

28 &amp; 29 Vict. c. 83., Locomotives on Roads.

28 &amp; 29 Vict. c. 121., Salmon Fishery.

29 &amp; 30 Vict. c. 52., Prosecution Expenses.

30 &amp; 31 Vict. c. 128., Railway Companies (Scotland).

30 &amp; 31 Vict. c. 127., Railway Companies.

30 &amp; 31 Vict. c. 141., Master and Servant.

31 &amp; 32 Vict. c. 32., Endowed Schools.

31 &amp; 32 Vict. c. 76., Militia Pay.

32 &amp; 33 Vict. c. 61., Trades Unions Funds.

104. *Joint Stock Companies Arrangement*:

Amends 25 &amp; 26 Vict. c. 89.

105. *Truck Commission*:

Appoints Commissioners to inquire into offences against the Truck Act, 1 &amp; 2 W. 4. c. 37.

Table A.—Acts of 33 &amp; 34 Vict. (in order of Chapter), &amp;c.—continued.

Ch.		Ch.	
106.	<i>Sanitary Act (Dublin) Amendment :</i> Amends 29 & 30 Vict. c. 90., so far as relates to Dublin.		and a Roman Catholic when celebrated by a Roman Catholic Priest.
107.	<i>Census.</i>	111.	<i>Beerhouses :</i> Explains, &c. 3 & 4 Vict. c. 61., as to Licences for certain Beerhouses.
108.	<i>Census (Scotland).</i>	112.	<i>Globe Loans (Ireland) :</i> Amends and in part repeals 1 & 2 W. 4. c. 33. as to Loans from Commissioners of Public Works. Applies 10 & 11 Vict. c. 32., Landed Property (Ireland). Applies 12 & 13 Vict. c. 23., Land Improvement, &c. (Ireland). Applies 13 & 14 Vict. c. 31., Drainage, &c. (Ireland). Applies 29 & 30 Vict. c. 40., Public Works Loan (Ireland).
109.	<i>Common Law Procedure Amendment (Ireland) :</i> Amends 16 & 17 Vict. c. 113., as to Abolition of certain Real Actions, &c.		
110.	<i>Matrimonial Causes and Marriage Law (Ireland) Amendment :</i> Explains section 45 of Irish Church Act, 32 & 33 Vict. c. 42. Applies sections 105–107 of 20 & 21 Vict. c. 79., Probates, &c. Amends and applies 7 & 8 Vict. c. 81. and 26 & 27 Vict. c. 27. Repeals so much of 19 Geo. 2. c. 13 (I.) as respects marriage between a Protestant		

## (B.)

Acts of former Sessions (in Chronological Order) repealed and amended by Acts of 33 &amp; 34 Vict.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 33 & 34 Vict.
2 Hen. 6. c. 17. in part <sup>(1)</sup> -	Master of the Mint - - -	Repealed -	10
7 Jas. 1. c. 2. - - -	Naturalization - - -	Repealed -	14
14 & 15 Chas. 2. c. 13. (Irish Parl.) -	Encouragement of Protestant Strangers, &c. in Ireland. -	Repealed -	14
18 & 19 Chas. 2. c. 5. <sup>(2)</sup> -	Coinage - - -	Repealed -	10
5 & 6 W. & M. c. 21. - -	Stamp Duties - - -	Repealed -	99
6 & 7 W. & M. c. 6. - -			
7 & 8 Will. 3. c. 35. - -			
9 Will. 3. c. 3. - - -	National Debt, &c. - - -	Repealed -	69
„ c. 25. - - -	Stamp Duties - - -	Repealed -	99
11 Will. 3. c. 6. <sup>(3)</sup> - -	Aliens - - -	Repealed -	14
1 Ann. st. 2. c. 19 - -	Stamp Duties, &c. - - -	Repealed -	99
2 Ann. c. 14. (Irish Parl.) -	Naturalization (Ireland) - -	Repealed -	14
6 Ann. c. 57. <sup>(4)</sup> - - -	Coin and Coinage, &c. - - -	Repealed -	10
„ c. 68. - - -	London Brokers - - -	Amended -	60
8 Ann. c. 5. - - -	Stamp Duties - - -	Repealed -	99
9 Ann. c. 15. - - -			
„ c. 16. - - -			
10 Ann. c. 18. (except s. 198.) -			
„ c. 19. - - -			
13 Ann. c. 18. - - -			

<sup>(1)</sup> c. 14. in Ruffhead.<sup>(2)</sup> 11 & 12 Will. 3. in Ruffhead.<sup>(3)</sup> 18 Chas. 2. in Ruffhead.<sup>(4)</sup> c. 80. in Ruffhead.



Table B.—Acts of former Sessions repealed and amended—*continued*.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 33 & 34 Vict.
1 Geo. 1. Stat. 1. c. 2. - -	National Debt, &c.	Repealed	69
" Stat. 2. c. 12. - -			
" c. 19. - -			
" c. 21. - -			
3 Geo. 1. c. 7. - -	Naturalization (Ireland)	Repealed	14
" c. 8. in part - -			
" c. 9. - -			
4 Geo. 1. c. 9. in part (Irish Parl.)	National Debt, &c.	Repealed	69
" c. 10. - -			
5 Geo. 1. c. 3. - -			
" c. 9. - -			
" c. 19. - -	Stamp Duties	Repealed	99
6 Geo. 1. c. 4. - -			
" c. 10. - -			
" c. 11. in part - -			
" c. 21. - -			
7 Geo. 1. Stat. 1. c. 5. - -			
" c. 27. in part - -			
" Stat. 2. - -	National Debt, &c.	Repealed	69
8 Geo. 1. c. 20. - -			
" c. 21. in part - -			
" c. 22. - -			
9 Geo. 1. c. 5. - -			
" c. 6. - -			
" c. 12. - -			
10 Geo. 1. c. 5. - -			
11 Geo. 1. c. 9. in part - -	National Debt, &c.	Repealed	69
" c. 17. - -			
12 Geo. 1. c. 2. in part - -			
13 Geo. 1. c. 3. - -			
" c. 21. - -			
1 Geo. 2. Stat. 2. c. 8. in part -			
2 Geo. 2. c. 3. in part - -			
3 Geo. 2. c. 16. - -			
4 Geo. 2. c. 5. - -	Mortmain Act	Amended	34
" c. 9. - -			
5 Geo. 2. c. 17. - -			
6 Geo. 2. c. 28. - -			
9 Geo. 2. c. 34. - -	National Debt, &c.	Repealed	69
" c. 36. - -			
10 Geo. 2. c. 17. - -			
11 Geo. 2. c. 27. - -			
13 Geo. 2. c. 7. - -	Naturalization	Repealed	14
15 Geo. 2. c. 13. in part - -			
" c. 19. - -	National Debt, &c.	Repealed	69
16 Geo. 2. c. 12. - -			
" c. 13. - -			
17 Geo. 2. c. 18. - -			
18 Geo. 2. c. 9. - -	Stamp Duties	Repealed	99
" c. 22. - -			
19 Geo. 2. c. 6. in part - -	National Debt, &c.	Repealed	69
" c. 12. - -			

Table B.—Acts of former Sessions repealed and amended—*continued*.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 33 & 34 Vict.
19 Geo. 2. c. 13. (I.) in part	Marriage between Protestant and Roman Catholic.	Repealed	110
20 Geo. 2. c. 3.	National Debt, &c.	Repealed	69
"    c. 10.			
"    c. 44.			
"    c. 45.	Naturalization	Repealed	14
21 Geo. 2. c. 2.	Stamp Duties	Repealed	99
22 Geo. 2. c. 23.	National Debt, &c.	Repealed	69
23 Geo. 2. c. 1. in part			
"    c. 16.			
"    c. 22. in part			
24 Geo. 2. c. 2.			
"    c. 4. in part			
"    c. 11.			
25 Geo. 2. c. 25.			
"    c. 27.			
26 Geo. 2. c. 1.			
"    c. 23.			
28 Geo. 2. c. 15.	Stamp Duties	Repealed	99
29 Geo. 2. c. 7.			
30 Geo. 2. c. 19.			
30 Geo. 2. c. 19. in part			
31 Geo. 2. c. 22. in part			
32 Geo. 2. c. 10.	National Debt, &c.	Repealed	69
"    c. 22.			
33 Geo. 2. c. 7. in part	Stamp Duties	Repealed	99
"    c. 12.			
1 Geo. 3. c. 7.			
2 Geo. 3. c. 9.			
"    c. 10.			
"    c. 36.			
3 Geo. 3. c. 9.			
"    c. 12.			
4 Geo. 3. c. 18.			
"    c. 25.			
5 Geo. 3. c. 16.	National Debt, &c.	Repealed	69
"    c. 23.			
"    c. 35.			
"    c. 42.			
"    c. 46.			
6 Geo. 3. c. 21.	Stamp Duties	Repealed	99
"    c. 39.			
"    c. 40.			
7 Geo. 3. c. 24, 25, 26.	National Debt, &c.	Repealed	69
"    c. 44.			
8 Geo. 3. c. 25.			
"    c. 29.	Stamp Duties	Repealed	99
"    c. 31.			
10 Geo. 3. c. 36.			
"    c. 46.	National Debt, &c.	Repealed	69
12 Geo. 3. c. 48.			
"    c. 63.			
13 Geo. 3. c. 25.	Stamp Duties	Repealed	99
"    c. 57.			

Table B.—Acts of former Sessions repealed and amended—*continued*.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 33 & 34 Vict.
14 Geo. 3. c. 70. - - -	Coin and Coinage - - -	Repealed - - -	10
" c. 76. - - -	National Debt, &c. - - -	Repealed - - -	69
" c. 84. - - -	Naturalization - - -	Repealed - - -	14
" c. 92. - - -	Coin and Coinage - - -	Repealed - - -	10
15 Geo. 3. c. 30. - - -	Coin and Coinage - - -	Repealed - - -	10
" c. 41. - - -	} National Debt, &c. - - -	Repealed - - -	69
16 Geo. 3. c. 34. - - -			
" c. 34. ss. 1-16. - - -	Stamp Duties - - -	Repealed - - -	99
" c. 52. - - -	Aliens (Ireland) - - -	Repealed - - -	14
17 Geo. 3. c. 46. - - -	National Debt, &c. - - -	Repealed - - -	69
" c. 50. - - -	Stamp Duties - - -	Repealed - - -	99
18 Geo. 3. c. 22. - - -	} National Debt, &c. - - -	Repealed - - -	69
19 Geo. 3. c. 18. - - -			
19 & 20 Geo. 3. c. 29. (Irish Parl.)	Naturalization (Ireland) - - -	Repealed - - -	14
20 Geo. 3. c. 16. - - -	} National Debt, &c. - - -	Repealed - - -	69
21 Geo. 3. c. 14. in part - - -			
22 Geo. 3. c. 8. - - -			
" c. 34. - - -			
23 Geo. 3. c. 35. - - -	} Nationalization (Ireland) - - -	Repealed - - -	14
23 & 24 Geo. 3. c. 38. (Irish Parl.)			
24 Geo. 3. Sess. 2. c. 10. - - -	} National Debt, &c. - - -	Repealed - - -	69
" c. 32. - - -			
" c. 37. - - -			
" c. 39. - - -			
25 Geo. 3. c. 32. - - -	} Stamp Duties - - -	Repealed - - -	99
" c. 71. - - -			
" c. 80. - - -			
" c. 83. - - -			
26 Geo. 3. c. 34. - - -	} National Debt, &c. - - -	Repealed - - -	69
" c. 48. - - -			
" c. 82. - - -			
27 Geo. 3. c. 13. ss. 41-46. - - -			
29 Geo. 3. c. 37. - - -	National Debt, &c. - - -	Repealed - - -	69
30 Geo. 3. c. 48. in part - - -	Judgment in High Treason: draw- ing, quartering, &c. - - -	Repealed - - -	23
31 Geo. 3. c. 25. - - -	Stamp Duties - - -	Repealed - - -	99
" c. 33. - - -	} National Debt, &c. - - -	Repealed - - -	69
33 Geo. 3. c. 28. - - -			
" c. 32. - - -			
" c. 47. in part - - -			
34 Geo. 3. c. 1. - - -	} Stamp Duties - - -	Repealed - - -	99
" c. 14. - - -			
" c. 21. - - -			
35 Geo. 3. c. 14. - - -			
" c. 32. - - -	} National Debt, &c. - - -	Repealed - - -	69
" c. 55. - - -			
" c. 66. - - -			
" c. 128. - - -			
36 Geo. 3. c. 12. - - -	} National Debt, &c. - - -	Repealed - - -	69
" c. 74. - - -			
" c. 122. - - -			
" c. 48. (Irish Parl.) - - -			
	Naturalization (Ireland) - - -	Repealed - - -	14

Table B.—Acts of former Sessions repealed and amended—*continued*.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 33 & 34 Vict.
37 Geo. 3. c. 9. - - -	} National Debt, &c. - - -	Repealed - - -	69
„ c. 10. - - -		- - -	-
„ c. 19. - - -	} Stamp Duties - - -	Repealed - - -	99
„ c. 20. - - -		- - -	-
„ c. 46. - - -	} National Debt - - -	Repealed - - -	69
„ c. 57. - - -		- - -	-
„ c. 90. - - -	} Stamp Duties - - -	Repealed - - -	99
„ c. 122. - - -		- - -	-
„ c. 127. - - -	} Forgery, &c. - - -	Repealed - - -	69
„ c. 136. - - -		- - -	-
38 Geo. 3. c. 37. - - -	} Meeting of Parliament - - -	Amended - - -	81
„ c. 56. - - -		- - -	-
„ c. 85. - - -	} Stamp Duties - - -	Repealed - - -	99
39 Geo. 3. c. 7. - - -		- - -	-
„ c. 60. - - -	} National Debt - - -	Repealed - - -	69
„ c. 92. - - -		- - -	-
„ c. 94. - - -	} Stamp Duties - - -	Repealed - - -	99
„ c. 107. - - -		- - -	-
39 & 40 Geo. 3. c. 14. - - -	} Master of the Mint - - -	Repealed - - -	10
„ c. 22. - - -		- - -	-
„ c. 72. (except s. 16.) - - -	} Stamp Duties - - -	Repealed - - -	99
„ c. 84. - - -		- - -	-
41 Geo. 3. (U.K.) c. 3. - - -	} National Debt, &c. - - -	Repealed - - -	69
„ c. 63. - - -		- - -	-
42 Geo. 3. c. 8. - - -	} Seats in H. C. by persons in Holy Orders. - - -	Amended - - -	91
„ c. 33. - - -		- - -	-
„ c. 58. - - -	} National Debt, &c. - - -	Repealed - - -	69
„ c. 99. - - -		- - -	-
43 Geo. 3. c. 67. - - -	} Stamp Duties - - -	Repealed - - -	99
„ c. 126. - - -		- - -	-
„ c. 127. - - -	} National Debt - - -	Repealed - - -	69
44 Geo. 3. c. 47. - - -		- - -	-
„ c. 48. - - -	} Stamp Duties - - -	Repealed - - -	99
„ c. 59. ss. 1, 2. - - -		- - -	-
„ c. 98 (with an exception.) - - -	} National Debt, &c. - - -	Repealed - - -	69
„ c. 99. - - -		- - -	-
45 Geo. 3. c. 8. - - -	} Stamp Duties - - -	Repealed - - -	99
„ c. 12. - - -		- - -	-
„ c. 40. - - -	} National Debt, &c. - - -	Repealed - - -	69
„ c. 73. - - -		- - -	-
„ c. 109. - - -	} Survey (Ireland) - - -	Repealed - - -	13
46 Geo. 3. c. 33. - - -		- - -	-
„ c. 43. (except ss. 4-7.) - - -	} National Debt, &c. - - -	Repealed - - -	69
„ c. 47. - - -		- - -	-
„ c. 55. - - -	} Stamp Duties - - -	Repealed - - -	99
47 Geo. 3. Sess. 1. c. 28. - - -		- - -	-
„ c. 46. - - -	} National Debt, &c. - - -	Repealed - - -	69
48 Geo. 3. c. 3. - - -		- - -	-
„ c. 38. - - -	} National Debt, &c. - - -	Repealed - - -	69
„ c. 76. - - -		- - -	-
„ c. 83. - - -		- - -	-

Table B.—Acts of former Sessions repealed and amended—*continued.*

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 33 & 34 Vict.
48 Geo. 3. c. 149. in part	Stamp Duties	Repealed	99
49 Geo. 3. c. 21.	National Debt, &c.	Repealed	69
" c. 71.			
" c. 78.			
50 Geo. 3. c. 23.	Stamp Duties	Repealed	99
" c. 35.	National Debt, &c.	Repealed	69
" c. 36.			
" c. 45.			
" c. 68.			
51 Geo. 3. c. 16.	National Debt, &c.	Repealed	69
" c. 22.			
" c. 26.			
" c. 35.			
" c. 49.	Coin : Tokens, &c.	Repealed	10
52 Geo. 3. c. 14.			
" c. 24.			
" c. 70.			
" c. 85.			
" c. 138.	National Debt, &c.	Repealed	69
" c. 157.			
53 Geo. 3. c. 41.			
" c. 53.	National Debt, &c.	Repealed	69
" c. 61.			
" c. 69.			
" c. 95.			
" c. 108.	Stamp Duties	Repealed	99
54 Geo. 3. c. 3.	National Debt, &c.	Repealed	69
" c. 4.	Coin : Tokens, &c.	Repealed	10
" c. 8.	National Debt, &c.	Repealed	69
" c. 76.			
" c. 85.			
" c. 89.			
" c. 139.	Stamp Duties	Repealed	99
" c. 140.			
" c. 144.			
" c. 146. in part	Judgment in High Treason : drawing, quartering, &c.	Repealed	23
55 Geo. 3. c. 2.	National Debt, &c.	Repealed	69
" c. 16.			
" c. 58.			
" c. 74.	Stamp Duties	Repealed	99
" c. 100. (except ss. 19, 20.)			
" c. 101.	National Debt, &c.	Repealed	69
" c. 124.			
" c. 184. in part	Stamp Duties	Repealed	99
" c. 185. (with an exception).			
56 Geo. 3. c. 7.	National Debt, &c.	Repealed	69
" c. 56. in part	Stamp Duties	Repealed	99
" c. 60.	National Debt, &c.	Repealed	65
" c. 68.	Coin and Coinage	Repealed	10
" c. 89.	National Debt, &c.	Repealed	69
57 Geo. 3. c. 46.	Coin : Tokens	Repealed	10
" c. 67.	Offices in the Royal Mint	Repealed	10

Table B.—Acts of former Sessions repealed and amended—*continued*.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 33 & 34 Vict.
57 Geo. 3. c. 82.	National Debt, &c.	Repealed	69
„ c. 83.		Repealed	10
„ c. 113.		Amended	60
58 Geo. 3. c. 23.	National Debt, &c.	Repealed	69
59 Geo. 3. c. 42.		Repealed	90
1 Geo. 4. c. 13.	National Debt, &c.	Repealed	69
„ c. 17.		Repealed	69
„ c. 23.		Repealed	69
1 & 2 Geo. 4. c. 26.	Stamp Duties	Repealed	99
„ c. 27.		Repealed	99
„ c. 55.		Repealed	99
„ c. 73.		Repealed	99
3 Geo. 4. c. 9.	National Debt, &c.	Repealed	69
„ c. 17.		Repealed	69
„ c. 26.		Repealed	69
„ c. 61.		Repealed	69
„ c. 66.		Repealed	69
„ c. 68.		Repealed	69
„ c. 89.		Repealed	69
4 Geo. 4. c. 22.	Stamp Duties	Repealed	99
5 Geo. 4. c. 54. s. 6.		Repealed	69
„ c. 9.		Repealed	69
„ c. 11.	National Debt, &c.	Repealed	69
„ c. 24.		Repealed	99
„ c. 41.		Repealed	69
„ c. 45.		Repealed	69
6 Geo. 4. c. 41.	Stamp Duties	Repealed	99
„ c. 50.		Repealed	77
„ c. 50. s. 47.		Repealed	14
„ c. 67.		Repealed	14
„ c. 79.		Repealed	10
„ c. 81. s. 2.		Repealed	29
„ c. 98.		Repealed	10
7 Geo. 4. c. 39.	National Debt, &c.	Repealed	69
„ c. 44.		Repealed	69
9 Geo. 4. c. 27.	Stamp Duties	Repealed	99
„ c. 49. (with an exception).		Repealed	99
10 Geo. 4. c. 24.	Deposits in Savings Banks by Married Women.	Amended	93
„ c. 31.	National Debt, &c.	Repealed	69
11 Geo. 4. & 1 Will. 4. c. 13.		Repealed	69
1 & 2 Will. 4. c. 10.	Salary of Master of the Mint	Repealed	10
„ c. 33.	Public Works Loans (Ireland)	Amended	112
2 & 3 Will. 4. c. 91.	Stamp Duties	Repealed	99
3 & 4 Will. 4. c. 23.		Repealed	99
„ c. 76, 77.	Municipal Elections (Scotland)	Amended	92
„ c. 85. s. 49.	Government of India	Repealed	3
„ c. 91. s. 37.	Jurors and Juries	Repealed	14

Table B.—Acts of former Sessions repealed and amended—*continued*.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 33 & 34 Vict.
3 & 4 Will. 4. c. 97. (except ss. 20, 21.)	Stamp Duties - - -	Repealed -	99
4 & 5 Will. 4. c. 31. - -	National Debt, &c. - - -	Repealed -	69
" c. 57. - - -	Stamp Duties - - -	Repealed -	99
" c. 80. - - -	National Debt, &c. - - -	Repealed -	69
5 & 6 Will. 4. c. 64. ss. 1, 2, 7.	Stamp Duties - - -	Repealed -	99
" c. 76. s. 28. - -	Municipal Corporations - -	Amended -	91
6 & 7 Will. 4. c. 32. - -	Stamps (Building Societies) -	Amended -	97
" c. 76. - - -	Stamp Duties on Newspapers -	Repealed -	79, 99
7 Will. 4. and 1 Vict. c. 9. -	The Mint - - -	Repealed -	10
" " " c. 41. - -	Small Debts (Scotland) - -	Amended -	63
" " " c. 45. in part.	Notices (Isle of Man) - -	Repealed -	51
1 & 2 Vict. " c. 59. - -	National Debt, &c. - - -	Repealed -	69
" c. 55. - - -	Leith Docks - - -	Amended -	87
" c. 81. - - -	National Debt, &c. - - -	Repealed -	69
" c. 85. - - -	Stamp Duties - - -	Repealed -	99
" c. 119. in part - -	Sheriffs (Scotland) - - -	Repealed -	86
2 & 3 Vict. c. 97. - -	} National Debt, &c. - - -	Repealed -	69
3 & 4 Vict. c. 75. - -			
" c. 79. - - -	Stamp Duties - - -	Repealed -	99
" c. 86. - - -	Church Discipline - - -	Amended -	91
" c. 96. in part - -	Postage (Newspapers) - - -	Repealed -	79
4 & 5 Vict. c. 34. - -	Stamp Duties - - -	Repealed -	99
5 Vict. c. 8. - - -	National Debt - - -	Repealed -	69
5 & 6 Vict. c. 79. in part -	} Stamp Duties - - -	Repealed -	99
" c. 82. in part - -			
6 & 7 Vict. c. 72. - -			
" c. 73. - - -	Attorneys Costs - - -	Amended -	28
" c. 75, 76. - - -	Apprehension of Offenders -	Repealed -	52
7 & 8 Vict. c. 4. - - -	} National Debt, &c. - - -	Repealed -	69
" c. 5. - - -			
" c. 21. - - -	Stamp Duties - - -	Repealed -	99
" c. 39. - - -	} National Debt, &c. - - -	Repealed -	69
" c. 64. - - -			
" c. 66. - - -	Aliens - - -	Repealed -	14
" c. 80. - - -	National Debt, &c. - - -	Repealed -	69
" c. 81. - - -	Marriages (Ireland) - - -	Amended -	110
8 & 9 Vict. c. 16. - - -	Companies - - -	Amended -	61
" c. 29. - - -	Printworks - - -	Repealed -	62
" c. 62. - - -	National Debt, &c. - - -	Repealed -	69
" c. 76. ss. 2, 3. - -	Stamp Duties - - -	Repealed -	99
" c. 97. - - -	National Debt, &c. - - -	Repealed -	69
" c. 120. - - -	Apprehension of Offenders -	Repealed -	52
9 & 10 Vict. c. 8. - - -	National Debt, &c. - - -	Repealed -	69
" c. 95. ss. 48, 50-55.	County Courts - - -	Repealed -	15
10 & 11 Vict. c. 9. - - -	National Debt, &c. - - -	Repealed -	69
" c. 70. - - -	Printworks - - -	Repealed -	62
" c. 83. - - -	Naturalization of Aliens - -	Repealed -	14
11 & 12 Vict. c. 2. s. 14. - -	Crime and Outrage (Ireland) -	Repealed -	9
" c. 117. - - -	Newspapers (Channel Islands) -	Repealed -	79
" c. 125. - - -	National Debt, &c. - - -	Repealed -	69
12 & 13 Vict. c. 41. - - -	Coinage and Currency - - -	Repealed -	10
" c. 80. (with an exception).	Stamp Duties - - -	Repealed -	99

Table B.—Acts of former Sessions repealed and amended—continued.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 33 & 34 Vict.
12 & 13 Vict. c. 91. s. 24. -	Collection of Rates (Dublin) -	Repealed -	11
13 & 14 Vict. c. 67. s. 6. -	Brewers Retail Licences -	Repealed -	29
" c. 97. (with an exception).	Stamp Duties -	Repealed -	99
16 & 17 Vict. c. 23. -	National Debt, &c. -	Repealed -	69
" c. 59. in part -	Stamp Duties -	Repealed -	99
" c. 63. (with an exception).	Stamp Duties -	Repealed -	79, 99
" c. 71. -	Stamp Duties on Newspapers -	Repealed -	99
" c. 92. -	Sheriffs (Scotland) -	Amended -	86
" c. 113. -	Abolition of Real Actions -	Amended -	109
" c. 132. -	National Debt -	Repealed -	69
17 & 18 Vict. c. 83. in part -	} Stamp Duties -	Repealed -	99
" c. 125. ss. 28, 29. -			
18 & 19 Vict. c. 18. -	National Debt, &c. -	Repealed -	69
" c. 27. -	Stamp Duties on Newspapers -	Repealed -	79, 99
" c. 78. s. 5. -	Stamp Duties -	Repealed -	99
" c. 97. in part -	Duties on Corn (Isle of Man) -	Repealed -	12
" c. 117. -	Ordnance Board -	Amended -	17
" c. 119. s. 29. -	Passengers Act -	Amended -	95
19 & 20 Vict. c. 5. -	} National Debt, &c. -	Repealed -	69
" c. 6. -			
" c. 21. -	} Stamp Duties -	Repealed -	99
" c. 22. -			
" c. 36. -	Peace Preservation (Ireland) -	{ Amended and repealed in part }	9
" c. 58. -	Municipal Elections (Scotland) -		
" c. 61. -	Survey (Great Britain) -	Repealed -	13
" c. 81. -	} Stamp Duties -	Repealed -	99
" c. 102. ss. 34, 35. -			
21 & 22 Vict. c. 1. -	National Debt, &c. -	Repealed -	69
" c. 20. -	} Stamp Duties -	Repealed -	99
" c. 24. -			
" c. 99. -	British Columbia -	Amended -	66
" c. 100. -	Petty Sessions Clerk (Ireland) -	Amended -	64
22 & 23 Vict. c. 30. -	Copper Coin, &c. -	Repealed -	10
" c. 41. -	Government of India: Contracts -	Amended -	59
23 & 24 Vict. c. 15. (except ss. 4-6.)	Stamp Duties -	Repealed -	99
" c. 50. -	Annuity Tax -	{ Amended, and repealed in part }	87
" c. 71. -	National Debt, &c. -		
" c. 78. -	Bleaching and Dyeing Works -	Repealed -	62
" c. 79. -	Sheriff Courthouses (Scotland) -	Amended -	16
" c. 111. in part -	Stamp Duties -	Repealed -	99
24 & 25 Vict. c. 3. in part -	National Debt, &c. -	Repealed -	69
" c. 21. in part -	Stamp Duties -	Repealed -	99
" c. 35. -	National Debt, &c. -	Repealed -	69
" c. 50. -	} Stamp Duties -	Repealed -	99
" c. 91. in part -			
" c. 96. s. 102. -	Larceny -	Amended -	65
" c. 98. -	Forgery -	Amended -	58
25 & 26 Vict. c. 8. -	Bleaching and Dyeing Works -	Repealed -	62
" c. 21. -	National Debt -	Repealed -	69
" c. 22. in part -	Stamp Duties -	Repealed -	99



Table B.—Acts of former Sessions repealed and amended—*continued*.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 33 & 34 Vict.
25 & 26 Vict. c. 22. s. 43.	Income Tax	Amended	32
" c. 70.	Surrender of Criminals (Denmark)	Repealed	52
" c. 89.	Companies	Amended	61, 104
" c. 101.	Police of Towns (Scotland)	Amended	37
" c. 105.	Highland Roads and Bridges	Amended	16
26 & 27 Vict. c. 10. s. 3.	Salmon	Amended	33
" c. 12.	Secretary of State for War	Amended	17
" c. 27.	Marriages (Ireland)	Amended	110
" c. 28.	} National Debt, &c.	Repealed	69
" c. 33. s. 24.			
" c. 33.	Beer Retailers Licences	Amended	29
" c. 38.	Bleaching and Dyeing Works	Repealed	62
" c. 74.	Sydney Branch Mint	Repealed	10
" c. ccxiv.	Elgin and Nairn Roads, &c.	Amended	16
27 & 28 Vict. c. 18. in part	} Stamp Duties	Repealed	99
" c. 56. in part			
" c. 90.	} Bleaching and Dyeing Works	Repealed	62
" c. 98.			
" c. 120.	} Railways	Amended, and repealed in part	19
" c. 121.			
28 & 29 Vict. c. 70.	Constabulary (Ireland)	Amended	83
" c. 78.	Mortgage Debentures	Amended, and repealed in part	20
" c. 89. s. 51.	Greenwich Hospital	Repealed	100
" c. 96. in part	Stamp Duties	Amended	99
" c. 96.	Life Policies	Amended	32
" c. 121. s. 65.	Salmon	Amended	33
29 & 30 Vict. c. 4.	Cattle Disease	Amended	36
" c. 11. s. 2.	National Debt, &c.	Repealed	69
" c. 14. ss. 8, 9.	County Courts	Repealed	15
" c. 23. in part	Customs (Isle of Man)	Repealed	43
" c. 64. s. 16.	Stamp Duties	Repealed	99
" c. 65.	Colonial Branch Mints	Repealed	10
" c. 67.	British Columbia	Amended	66
" c. 82. s. 13.	Coinage	Repealed	10
" c. 90.	Sanitary Act, 1866	Amended	53, 106
" c. 103.	Constabulary (Ireland)	Amended	83
" c. 121.	Extradition Treaties	Repealed	52
30 & 31 Vict. c. 6.	Metropolitan Poor	Amended	18
" c. 15.	Shipping Dues Exemption	Amended	50
" c. 23.	Sea Insurance Policies	Amended	97
" c. 34. ss. 9, 10.	Army Enlistment	Repealed	7
" c. 90. ss. 20-24.	} Stamp Duties	Repealed	99
" c. 96. s. 23.			
" c. 103.	Factories	Amended, and repealed in part	62
" c. 107.	Annuity Tax	Amended, and repealed in part	87
" c. 110.	Reserve Force	Amended	67
" c. 111.	Militia Reserve	Amended	67
" c. 113.	Sewage Utilization	Amended	53
" c. 142. s. 18.	County Courts	Repealed	15
" c. 46.	Workshops	Amended	62
31 & 32 Vict. c. 48.	Municipal Elections (Scotland)	Amended	92
" c. 99.	Turnpike Trusts	Amended	73

Table B.—Acts of former Sessions repealed and amended—*continued*.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 33 & 34 Vict.
31 & 32 Vict. c. 100. in part -	Stamp Duties - - -	Repealed - -	99
„ c. 108. - -	Municipal Elections (Scotland) -	Amended - -	92
„ c. 110. - -	Telegraphs - - -	Amended - -	88
„ c. 118. - -	Public Schools - - -	Amended - -	84
„ c. 124. ss. 10-12.	Stamp Duties - - -	Repealed - -	99
32 & 33 Vict. c. 14. ss. 6, 7. -	Income Tax - - -	Repealed - -	32
„ c. 27. - -	Beerhouses, &c. - - -	Amended - -	29
„ c. 32. s. 6. - -	Pensions Commutation - - -	Amended - -	101
„ c. 52. - -	Shipping Dues Exemption - - -	Repealed - -	50
„ c. 68. - -	Evidence Amendment - - -	Amended - -	49
„ c. 73. - -	Telegraphs - - -	Amended - -	88
„ c. 102. - -	Metropolitan Board of Works -	Amended - -	24
„ c. 104. - -	National Debt, &c. - - -	Repealed - -	69
33 & 34 Vict. c. 14. - -	Oaths of Allegiance - - -	Amended - -	102
„ c. 47. - -	National Debt, &c. - - -	Repealed - -	69

LONDON: Printed by GEORGE E. EYRE and WILLIAM SPOTTISWOODE,  
Printers to the Queen's most Excellent Majesty.















